

STATE OF CALIFORNIA
OFF-HIGHWAY MOTOR VEHICLE RECREATION COMMISSION
MEETING MINUTES SYNOPSIS - APPROVED

April 5, 2011

Veteran's Memorial Hall
649 San Benito Street
Hollister, CA 95023

IN ATTENDANCE:

OHMVR COMMISSIONERS:

Gary Willard, Chair
Eric Lueder, Vice Chair
Brad Franklin
Kane Silverberg
Paul Slavik
Stan Van Velsor
Breene Kerr

CALIFORNIA STATE PARKS OHMVR STAFF:

Daphne Greene, Deputy Director, OHMVR Division
Phil Jenkins, Chief, OHMVR Division
Tim La Franchi, Legal Counsel, OHMVR Division

OTHER OHMVR STAFF AND REGISTERED VISTIORS

1 **AGENDA ITEM I - CALL TO ORDER**

2 Chair Willard called the meeting to order at 10:09 a.m.

3 **AGENDA ITEM I(A) - PLEDGE OF ALLEGIANCE**

4 Commissioner Silverberg led the meeting attendees in the
5 Pledge of Allegiance.

6 **AGENDA ITEM I(B) - ROLL CALL**

7 Seven Commission Members were present at time of roll
8 call.

9 **AGENDA ITEM II - APPROVAL OF AGENDA**

10 CHAIR WILLARD: May I please have a motion for
11 approval of the agenda.

12 COMMISSIONER SILVERBERG: So moved.

13 CHAIR WILLARD: Okay.

14 COMMISSIONER LUEDER: I second that.

15 CHAIR WILLARD: Okay. Any discussion on the
16 agenda?

17 Hearing none, I'll call for the vote.

18 All those in favor?

19 (Commissioners simultaneously voted.)

20 CHAIR WILLARD: Approval of the agenda passes.

21 **AGENDA ITEM III(A) (B) - APPROVAL OF MINUTES**

22 CHAIR WILLARD: May I please have the motion for
23 approval of the minutes of the last meeting.

24 So moved.

25 Any discussion, corrections on the minutes?

1 COMMISSIONER VAN VELSOR: I did have a couple
2 things.

3 CHAIR WILLARD: Commissioner Van Velsor.

4 COMMISSIONER VAN VELSOR: Looking at the
5 March 14th minutes, they seem to be incomplete in that
6 when you move from one page to the next, there's text
7 missing. Did anyone else notice that?

8 CHAIR WILLARD: I'm sorry, what page are you on?

9 COMMISSIONER VAN VELSOR: All the pages. In the
10 March 14th --

11 CHAIR WILLARD: No, the --

12 COMMISSIONER VAN VELSOR: There seems to be text
13 missing when it goes from one page to the next at least
14 on my copy.

15 CHAIR WILLARD: I didn't notice that. You've
16 got a specific page?

17 COMMISSIONER VAN VELSOR: Maybe it's just my
18 copy. So look at the sheet, page 2, at the bottom of
19 the page, "Commissioner Perez: "Thank you. I'm
20 certainly terrific husband and three and great kids."
21 Is that what yours says?

22 CHAIR WILLARD: I'm sorry, where are you
23 looking?

24 COMMISSIONER VAN VELSOR: Mine was on page 2 at
25 the bottom of that page where it says, "Commissioner

1 Perez," and then her statement is, "Thank you. I'm
2 certainly," and then going to the next page, mine says,
3 "terrific husband and three great kids." So "I'm
4 certainly" -- something -- "glad to be here."

5 DEPUTY DIR. GREENE: Commissioner Van Velsor, I
6 am very sorry. And you're absolutely correct. And so
7 if I may, Commissioners, I apologize for this oversight.
8 And if we could, we'll clarify the March meeting
9 minutes. We'll double-check on the others. And I've
10 gone through them, also. Did you notice that? We'll
11 double-check on the others. The March meeting, why
12 don't we bring that up at the May meeting and we'll make
13 sure those minutes get clarified.

14 CHAIR WILLARD: So we'll hold off approval of
15 the minutes until the next meeting.

16 DEPUTY DIR. GREENE: That's correct. Correct.

17 CHAIR WILLARD: Commissioner Kerr.

18 COMMISSIONER KERR: They sort of butchered mine,
19 too. But I'm curious, do we not just use summary
20 minutes? Is there some kind of Word recognition program
21 to do all this, or is this done by an actual person?

22 DEPUTY DIR. GREENE: We actually have it dating
23 back to 2005, I believe it was. As a result of the BSA
24 audit, we had a lot of questions about actions that were
25 taken at Commission meetings, and so we moved forward to

1 make sure that we transcribe them accurately. Obviously
2 something went wrong when we did move it to the four
3 pages. So we just need to get that corrected and bring
4 it back to you.

5 COMMISSIONER KERR: Okay. Well, I did notice
6 the issue you described to the Commissioner. And I'd
7 like to correct a spelling of my son's name to
8 K-a-e-l-i-n.

9 DEPUTY DIR. GREENE: Correct. And that is so
10 noted as well.

11 CHAIR WILLARD: Okay. So we'll table the
12 approval of the March 14th minutes to the next meeting.
13 But I think we should probably still move ahead with the
14 approval of the October 28th and December 2nd minutes.

15 So --

16 COMMISSIONER VAN VELSOR: Can I just make one
17 more --

18 CHAIR WILLARD: Sure. Go ahead.

19 COMMISSIONER VAN VELSOR: Just pointing out a
20 correction as well. On page 122 on March 14th,
21 sheet 32, line 9, "according to Robert Wright," I just
22 wanted to get the correct spelling there. It's Reich --
23 R-e-i-c-h.

24 CHAIR WILLARD: Uh-huh.

25 COMMISSIONER VAN VELSOR: That's all I have.

1 CHAIR WILLARD: Okay. So can we amend the
2 motion that's before us to just have the approval of the
3 October 28th and December 2nd minutes. Make a motion?

4 COMMISSIONER LUEDER: So amended.

5 CHAIR WILLARD: Okay. Any discussion on those
6 two sets of minutes?

7 Okay. Calling for a vote. All those in favor?

8 (Commissioners simultaneously voted.)

9 CHAIR WILLARD: Okay. So --

10 COMMISSIONER KERR: Mr. Chair, I was abstaining.
11 I was not here.

12 CHAIR WILLARD: Noted. Thank you.

13 DEPUTY DIR. GREENE: Again, I apologize.

14 **AGENDA ITEM IV(A) - REPORTS - COMMISSION**

15 CHAIR WILLARD: Thank you.

16 Okay. Moving on to Commissioner Reports.

17 Commissioner Franklin, Commissioner Van Velsor,
18 do either of you have something to tell us about your
19 trip (unintelligible)?

20 COMMISSIONER FRANKLIN: Yes. In, I believe it
21 was, January of this year, Commissioner Van Velsor and I
22 went down to Oceano and toured the park there and met
23 with various concessionaires and vendors to kind of
24 review and oversee and get a firsthand explanation of
25 exactly how they run through their OHV rental program,

1 their on-site safety training, and the actual hands-on
2 training provided to renters right there on the beach.
3 That was in advance of the new concessionaires contract
4 being published and sent out. So just a little update
5 there.

6 CHAIR WILLARD: Okay. Any other Commissioners
7 have anything to say about the subcommittees they're on
8 (unintelligible)?

9 Okay. Deputy Director, can you please give us
10 your report.

11 **AGENDA ITEM IV(B) - DEPUTY DIRECTOR'S REPORTS**

12 DEPUTY DIR. GREENE: Good morning,
13 Commissioners. Deputy Director Daphne Greene. Members
14 of the public, welcome. It's nice to have people here
15 today. And just want to say thank you to the board of
16 supervisors and the City of Hollister for having us
17 here.

18 Apropos of what Commissioners Franklin and
19 Van Velsor on their meeting to Oceano Dunes, the RFP has
20 been released for Oceano Dunes Rental Agreement.
21 There's a mandatory meeting that is being held today to
22 deal with that RFP going out to answer any questions
23 that interested parties may have. And so we anticipate
24 a pretty large turnout for that meeting. So anybody
25 who's interested in that needs to be in attendance.

1 Also, last meeting we heard from Superintendent
2 Kathy Dolinar at Ocotillo Wells regarding the opening of
3 the four-by-four area down at Ocotillo Wells. It was a
4 very successful opening. A couple members of the
5 legislature came out and joined us. This is an area
6 that we developed purposefully as a challenging play
7 area.

8 We're also moving forward on the General Plan
9 process, as you well know, down in Ocotillo Wells.
10 Interestingly, we weren't sure we had a public meeting
11 in the Salton Sea and the community there. We
12 anticipated maybe 20, 25 people showing up. There were
13 150 that showed up to that meeting and a huge interest
14 on behalf of not only the recreation community,
15 conservation community, but a number of business owners
16 in the area, some of the Native-American tribes in the
17 area as well. So it was just nice to see that many
18 people who have an interest in the General Plan process.
19 I think it speaks to we've really tried to do the
20 outreach on that.

21 Just as an update, I know that we obviously
22 on the Heber Dunes General Plan that we're moving for
23 all of you and your approval, we changed that date. So
24 we'll be there in the fall. I believe we're there in
25 our December meeting. So we'll be headed down to the

1 desert to Heber Dunes for that.

2 At this time, Sixto Fernandez has been very busy
3 with grants. So I'd like to turn it to Sixto for an
4 overview of any questions that you may have for the
5 Grants Program.

6 **AGENDA ITEM IV(B) (1) - GRANTS PROGRAM UPDATE**

7 OHV STAFF FERNANDEZ: Okay. No questions?
8 We're done.

9 Okay. Actually, I had three finder binders. We
10 are well underway on our 2010/11 grant cycle. Okay. As
11 required by our regulations, the current grant cycle
12 starts on the second Monday of January, which was
13 January 10th. That's when the application process
14 opened up to the applicants. The week of January 10th,
15 we also provided workshops both in Northern California
16 and Southern California, Sacramento and Ontario
17 respectively. So we had about a hundred people
18 attending both workshops. It was a good turnout.

19 So preliminary applications were due on
20 March 7th of this year. So if an applicant did submit a
21 preliminary application, they would no longer continue
22 with this process. So if we can take a look at the
23 chart you have right after the staff reports. Now, we
24 provided --

25 DEPUTY DIR. GREENE: Sixto, if I may.

1 Commissioners, there's an additional document we
2 provided that Vicki just said was in your blue folder.
3 So if you look in your blue folder, there's an
4 additional grants document that belongs in the staff
5 report.

6 Thank you. I'm sorry.

7 OHV STAFF FERNANDEZ: So if we can take a look
8 at this one that should be in your binder, it says,
9 "Preliminary Amount Requested." It's a one-page sheet.
10 This is just a quick overview of what was submitted
11 during preliminary applications. Mind you, this will
12 change at final. But this will at least give you a
13 quick look of what was being requested.

14 So across we have all the different categories
15 that one can apply for. So we have ground operations,
16 acquisitions, development, planning. Those four
17 (unintelligible) items make up the operation and
18 maintenance. Then you have restoration, education and
19 safety, and law enforcement. And then on the left-hand
20 side there, the rows, you have the different categories
21 of applicants. You have the United States Forest
22 Service; Bureau of Land Management; other federal, in
23 this case it was National Park Service in Mojave; local
24 agencies, and those are your counties, cities that come
25 in; districts, non-profits. We do have our first

1 federally recognized tribe that's come in and requested
2 grant funds. So we have a total of 94 applicants this
3 year.

4 In the blue section, if you go down, for the
5 operation and maintenance, we have 13 million allocated
6 for that category. And that's 50 percent of 26 million.
7 If you look down under Restoration, we have 7.6 million.
8 Education and safety we have 1.3 million. Law
9 enforcement, 5.2. So those are the actual amounts that
10 are allocated to each category.

11 CHAIR WILLARD: Sixto, I have a question.

12 OHV STAFF FERNANDEZ: Yes.

13 CHAIR WILLARD: The available 27,100,000, has
14 that been adjusted post AB95 and SB84?

15 OHV STAFF FERNANDEZ: No, not yet. These funds
16 were appropriated last year. So they were pre-AB95.

17 CHAIR WILLARD: So next year we'll see it again.

18 OHV STAFF FERNANDEZ: We'll see that next year,
19 yeah.

20 CHAIR WILLARD: Okay. Commissioner Kerr.

21 COMMISSIONER KERR: That's a very relevant
22 question. And these monies or at least \$27 million has
23 already been allocated, signed, sealed and delivered
24 and, as I understand it, cannot now be taken away.

25 OHV STAFF FERNANDEZ: Correct.

1 COMMISSIONER KERR: And I doubt if it was going
2 to happen next year, but I think that because of the
3 physical urgency and the things that are happening with
4 OHV's budget that we should be looking very carefully at
5 this potential allocation of grant monies with an eye
6 towards projects that will be interrupted or adversely
7 affected by the budget crisis. And there's a way to
8 perhaps look closely at this Grants Program and see if
9 there's some high-priority needs that could be addressed
10 by making some discretionary modifications or perhaps
11 opening up the grants process, for example, to local
12 agencies, maybe a second round. Because as I see this,
13 the grant applications although they are in excess of
14 27 million, they are only mildly in excess. So compared
15 to most grants programs that we may all be familiar with
16 where you might have two or three to one application to
17 funding, here we're only slightly under-funded for all
18 the applications. And just I'd like to bring the
19 Commission's attention to the very small amount of money
20 that is suggested for acquisition. And I find that's
21 something that we should take a more careful look at.
22 This is the best time in probably 20 years to buy land.
23 And our own agency acquisition efforts are going to be
24 adversely affected by the budget crisis. I'd like to
25 suggest that there might be a way to deal with some

1 high-priority issues with the Grants Program.

2 CHAIR WILLARD: And thank you for that. I think
3 that's a couple of really good points there.

4 Deputy Director.

5 DEPUTY DIR. GREENE: So how would that work.
6 And it's certainly your right -- I think all of us have
7 been frustrated by the low prices for land right now and
8 our inability to be able to move to acquire it. One of
9 the ways that we would address this would be as we go
10 through the regulation process for our grant cycle. So
11 each year, as we finish the grant cycle, we're already
12 starting -- and we're already starting on the
13 regulations for the next grant cycle -- looking at some
14 of the questions that are raised that maybe we need to
15 better clarify issues. In this case, I think
16 Commissioner Kerr, what he might be suggesting is that
17 we look at the criteria by which we make the awards of
18 the grants. And so that if we were to change the
19 criteria, and that would be vetted out through the
20 public process through the grant cycle, through our
21 regulation cycle, that we would, therefore, prioritize
22 it. Acquisitions would move up from a specific amount
23 that we currently have and make more acquisition funding
24 available to those counties.

25 I think then the question becomes that we need

1 to always ensure, is there a way that the counties can
2 help, then, in the operational dollars and then not rely
3 completely on the Grants Program. Because if they're
4 relying completely on the Grants Program and then we
5 have another hit and the full funding, that could prove
6 to be devastating for those counties that have the
7 parks. So it's a good idea. And I think that we need
8 to try and look at it through the regulation process and
9 get the feedback from everybody.

10 CHAIR WILLARD: Okay.

11 COMMISSIONER KERR: I'd just like to conclude
12 that I feel that we are in a highly unusual situation.
13 Our budgets are constrained severely by the actions of
14 the state government, and that I would personally like
15 to see us deal with this issue now rather than a year
16 from now. But obviously that's just my opinion. So I'm
17 putting it out there for the rest of the Commission.
18 And I believe that there's probably a way, upon advice
19 of legal counsel, to interject our oversight into this
20 year's grant cycle if we had the desire to do so.

21 CHAIR WILLARD: Well, it's my understanding that
22 the Grants Program is pretty much etched certainly for
23 the current year. We can't really go in and make too
24 many drastic changes to how funds are allocated.

25 Isn't that correct?

1 DEPUTY DIR. GREENE: Well, the regulation
2 process that we use is through the Office of
3 Administrative Law. So we always need to make sure.
4 Because if you look historically with the Grants Program
5 dating back to the late nineties, there was a legal
6 challenge based on the fact that there were underground
7 regulations. And so it has been something that we have
8 made a very strong effort to make sure that we're
9 working through the Office of Administrative Law and
10 that we go through the public process where everybody
11 knows what those priorities are.

12 Until we can look at it, I don't know if there's
13 any ability that we would have to change that midstream
14 because then that sends sort of everything on its head.
15 Because the grant applicants have applied based on the
16 criteria that were established and approved by the
17 Office of Administrative Law.

18 ATTORNEY LA FRANCHI: I don't think I can really
19 add much. The administrative process is spelled out
20 pretty clearly in statute in the Government Code. And
21 as Deputy Director Greene mentioned, we've had several
22 challenges over the years to the Grants Program through
23 litigation and complaints filed with the Office of
24 Administrative Law. And while there are some very
25 limited abilities to make adjustments within the

1 existing Grants Program, those are extremely limited.
2 And I'm not saying that I wouldn't be willing to work
3 with the staff and go back and look and see what kinds
4 of flexibility -- but I also know that with regard to
5 the realities of the Acquisition Program, local
6 agencies, with the recent changes to the OHMVR Program,
7 the Grants Program, it requires local agencies to come
8 up with a significant amount of match and also to be
9 able to demonstrate that they can operate the program.

10 So it's not just a situation of changing the
11 regulations; there's some practical sides of it that you
12 may want to look at if you want to schedule an agenda
13 item to get some local agencies and talk about what
14 they're trying to do and how hard it is.

15 So yeah, there are some limited ways of looking
16 at the regulations in emergency situations. I'm not
17 confident that I'd want to say there's a lot of
18 possibility here, but certainly I'd be willing with
19 staff to look at it and come back and talk a little bit
20 more about it, if you'd like me to do that.

21 CHAIR WILLARD: Yeah, thank you. I think that
22 would be good to hear.

23 DEPUTY DIR. GREENE: Well, I think as you look
24 at the sheet, just as an indication, we only have in
25 this grant cycle four projects requesting \$448,000 out

1 of a million three that's available for acquisitions.
2 That's not to say I don't appreciate the desire that we
3 all have to acquire land, and right now I certainly
4 think that I was certainly disappointed by the borrowing
5 of the \$21 million because I truly think that that is
6 something that we could have really focused towards some
7 good acquisitions. But we will continue to try again.

8 OHV STAFF FERNANDEZ: There has been some
9 counties that have come in for planning projects looking
10 for appropriate land to perhaps put in an OHV park. So
11 that might be a possibility in the future.

12 CHAIR WILLARD: Sixto, another question. Is
13 there anything here that jumps out at you that's a
14 little bit out of the ordinary from comparison to prior
15 years as far as the requested amounts? I see the total
16 of 34 million. My recollection is that's sort of about
17 what we've seen in the past, maybe a little bit more.

18 OHV STAFF FERNANDEZ: That's correct. We have
19 27.1 available; 34.5 million is being requested. So
20 you're looking at 7.4 million. That's been pretty
21 consistent.

22 One of the things that jumps out at me here,
23 also, is the total projects. Last year we had 213, now
24 we have 234 projects submitted. So that's quite a bit
25 of a jump.

1 Local law enforcement, if you look down the Law
2 Enforcement category, we have 5.2 available. And as you
3 can see, there's 8.3 requested. That is the most
4 over-subscribed category. And it's all within the local
5 sheriffs and PDs. Those are where the requests lie.

6 So like I said, every category seems to be
7 over-subscribed other than Restoration. But mind you,
8 these are preliminary numbers. They will change with
9 the final because we'll have an opportunity to review
10 the applications, eliminate some of the requested
11 amounts. And some of the categories, requested projects
12 will change from one category to another. So these will
13 change by final.

14 Okay. So those are the preliminary numbers.
15 During the month of March, the Division staff, Grants
16 Team has been very busy taking a look at the
17 applications that have been submitted. They review each
18 and every one of them. Then we will prepare some
19 comments to the applicants.

20 Also, during the month of March, the public was
21 able to give their feedback to both the applicant and
22 the Division on the applications that were submitted.
23 So the actual public comment period ended yesterday,
24 April 4th. And so what we'll do is we'll take the
25 comments that we received from the public and put in our

1 own comments and draw up a document to send to the
2 applicants. They will have all of April to work on any
3 changes that they may deem necessary based on the
4 Division or public comments. And then the final
5 applications are due May 2nd.

6 During the month of May, we will, again, take a
7 look at all the applications, validate the scores on the
8 criteria questions, and then, per regulations, the
9 Intent to Award will be posted on the Division's website
10 on June 6th. That will then kick in a 30-day appeal
11 period. If there are no appeals, then the final awards
12 are posted on our Division's website on July 7th. And
13 from then on, we work with the successful applicants to
14 draw up their agreements and work from there.

15 CHAIR WILLARD: Commissioners, any questions?

16 Commissioner Van Velsor.

17 COMMISSONER VAN VELSOR: Yes. I was curious, do
18 you have a sense of why the restoration dollars are less
19 than the available money? Was that similar to last
20 year?

21 OHV STAFF FERNANDEZ: It's similar to last year.
22 My discussions with some of the federal agencies is that
23 they're so overwhelmed right now with work that they
24 have that they just cannot come in for projects. So
25 that's the sense that I get from them in conversations

1 I've had. It's just that they're overworked, and they
2 have too much on their plate to come in. I anticipate
3 that changing, and hopefully in the next couple years
4 there will be more submitted.

5 COMMISSIONER VAN VELSOR: And then a second
6 question, the non-profits, are there more projects this
7 year than last for non-profits?

8 OHV STAFF FERNANDEZ: Yes. Actually, we have
9 actually one more non-profit applicant this year than we
10 did last year. The amount of projects are the same. So
11 last year we had 22 projects submitted, and this year we
12 also have 22 projects submitted. Although, we do have
13 one more applicant than we did last year.

14 COMMISSIONER VAN VELSOR: Do you think there's a
15 capacity issue with non-profits? I mean, for example,
16 the federal government does not have the capacity to
17 apply and develop for restoration. It seems like they
18 could rely on non-profits to provide that capacity. Why
19 is that not happening?

20 OHV STAFF FERNANDEZ: I don't know. But I think
21 that's something we can obviously look into and go out
22 and do some more outreach. I think there are some
23 non-profits out there that can come in and partner up
24 with the federal land managers. The one thing with
25 these restoration projects, they're three years in

1 duration. So if a non-profit applicant comes in for
2 restoration projects, then they have three years to
3 complete that. So there is that cycle that may be
4 problematic.

5 CHIEF JENKINS: If I may, the other thing that
6 tends to limit sometimes applications is the need to
7 supply match. And so once an agency has applied for a
8 lot of things in a lot of areas, they're starting to run
9 out of match. And so you add more restoration projects
10 or you add more of whatever, it's both an issue of
11 providing the match, finding the match, and then also
12 having the actual staff on hand to do the projects. So
13 with money like ours that one year you might get it, one
14 year you may not get it, you can't really staff up for
15 that because you don't have a guarantee that you're
16 going to have money to pay those staff year after year
17 after year. That's why we turned the law enforcement
18 program into a non-competitive grant program, for that
19 specific reason, so they could have officers on hand
20 that they knew every year they would get funding for.
21 So that's just a couple of things that they have to
22 balance when they're looking at that.

23 Also, just to the point of the acquisition,
24 because I think we all agree that it's just killing us
25 that we can't pick up some of these deals that are out

1 there on the acquisition. Next year's money is going to
2 be \$5 million less than we had this year. Part of the
3 dynamic of the Grants Program that we have, it's a
4 little bit different than some other grants programs.
5 For instance, there's several big, large grants programs
6 in the department that are to build facilities, a lot of
7 these one-time type of expenses. A lot of our money
8 goes to daily operations. So when we lose \$5 million
9 out of that next year, the operations portion is going
10 to go down. So some of those Forest Service, BLM,
11 county, et cetera, agencies that depend on that money to
12 keep their daily operations going are going to be
13 hurting there.

14 So while moving some money into acquisitions is
15 probably a smart move, we also have to balance that with
16 what the impacts might be to the ongoing operations in
17 some of the areas. So just a few things to toy with.

18 The last thought, by the way, just to remind
19 everybody, is we still don't have clarity on that
20 \$1.1 million bump that comes every year for the
21 restoration. So when the bills were passed in --
22 someone might have to talk a little bit more in the
23 budget section coming up -- but when the bills were
24 passed that wrote in that the 5 million came from
25 grants, 5 million from operations, it didn't specify

1 whether it all had to come out of the \$26 million line
2 item, which is the basic grant amount, or if you also
3 take it proportionally out of the restoration
4 \$1.1 million extra bump, which is pulled out of the
5 reserves, which are now gone, recall. So the place
6 where we get that \$1.1 million extra money every year
7 has been borrowed. So that's a dry bank. So when they
8 take 5 million out of the program, do you start with
9 1.1 million and then take the remainder out of the 26
10 that's left? What I'm telling you is we haven't gotten
11 clarity on that. So it could be that we lose the
12 5 million out of the 26 million and the 1.1 million,
13 which makes the picture even more grim. So yet to be
14 determined on that one.

15 CHAIR WILLARD: Okay. Commissioner Lueder.

16 COMMISSIONER LUEDER: Yes, I have a question for
17 Sixto.

18 Is there a minimum score for an application to
19 qualify?

20 OHV STAFF FERNANDEZ: No, there's not a minimum
21 score. What happens is each application is scored, and
22 then we line them up from high to low and then start
23 giving out the money. And once the money ends, those
24 that fall below the cut line, don't get funded. But
25 just directly to your question, there is no minimum

1 score.

2 COMMISSIONER LUEDER: Okay. The reason I ask
3 that is like in the case of restoration where all the
4 funds aren't applied for, I remember an instance a
5 couple of years ago where over a million dollars went to
6 a project that scored in the low 30s, and so that
7 concerns me. I'm not against restoration in any way,
8 but I do like to see our money go towards projects that
9 are good projects that are going to get back the
10 restoration dollars that we put into it as far as
11 cost/benefit ratio. So that's my concern. And I'd like
12 to see some sort of investigation to see what it would
13 take to put a minimum score in there because I just
14 don't like to see our dollars thrown away on projects
15 that aren't that good a quality.

16 OHV STAFF FERNANDEZ: That's something we can
17 take a look at at our next regulatory review.

18 CHIEF JENKINS: And just for the record, when we
19 went to the no minimum-score criteria, it was because at
20 the time there were several grant categories where money
21 was being requested, people were falling below the
22 cut-off point of where we were scoring, and then the
23 money wasn't being distributed. And the question became
24 when you look at the applications, if you have a
25 qualifying application, in other words, if you're asking

1 for whatever the category may be, whether it's a law
2 enforcement grant or an acquisition grant or operations
3 or restoration, if you meet the minimum criteria, then
4 it's a qualified project. Everybody has to meet the
5 minimum bar. We're not going to grant money to a
6 project that doesn't fit the basic criteria. When it
7 looks like once you've past the gate, you have a
8 qualifying project, now it's scored. And they're scored
9 based on the criteria that's developed in the regs. But
10 the theory is everybody that gets past the starting gate
11 deserves to be funded. Then you fund them based on
12 those scores. And so that's where the minimum-score
13 thing we threw out because it might not score well
14 against the other projects. Doesn't necessarily mean
15 it's not a qualifying project.

16 So we will look at that again, the minimum-score
17 issue, but it may be more practicable to look at where
18 is the bar set as far as lots of minimum qualifying
19 projects.

20 CHAIR WILLARD: So this is the third grant cycle
21 since the major revision?

22 OHV STAFF FERNANDEZ: That's correct, the third
23 grant cycle.

24 CHAIR WILLARD: Yeah. Yeah.

25 OHV STAFF FERNANDEZ: And -- I'm sorry. Go

1 ahead.

2 CHAIR WILLARD: It seems like we've got all the
3 bugs worked out. Yeah, from my perspective just sitting
4 up here, it just seems like it's humming along like a
5 well-oiled machine. But I realize that you guys are all
6 asses and elbows, so to speak, when there's deadlines.
7 So I want to thank the grant team for all the hard work
8 you guys are putting into it.

9 Commissioner Kerr.

10 COMMISSIONER KERR: What's the local match on
11 acquisitions?

12 OHV STAFF FERNANDEZ: All matches are
13 25 percent.

14 COMMISSIONER KERR: So everything's 25 percent.

15 OHV STAFF FERNANDEZ: Correct.

16 COMMISSIONER KERR: Okay.

17 OHV STAFF FERNANDEZ: It's 25 percent or the
18 total project cost.

19 COMMISSIONER KERR: So are soft costs eligible
20 for the match?

21 OHV STAFF FERNANDEZ: What do you mean?

22 COMMISSIONER KERR: Well, like planning, this
23 developer director -- you know, all the staff time that
24 goes into it.

25 OHV STAFF FERNANDEZ: That could be used as

1 match.

2 COMMISSIONER KERR: Okay.

3 CHAIR WILLARD: Great.

4 Commissioners, are there any other discussion
5 questions on the Grants Program?

6 Okay. So moving on, right on time, public
7 comment period --

8 DEPUTY DIR. GREENE: Commissioner Willard --

9 CHAIR WILLARD: -- plus comments on the --

10 DEPUTY DIR. GREENE: Couple more points on that
11 directors' report for Chief --

12 CHAIR WILLARD: Oh. I'm sorry. Go right ahead.

13 DEPUTY DIR. GREENE: That's okay.

14 CHIEF JENKINS: Just a couple of minor points.

15 Just to keep everyone aware of where things are
16 going with the running of the Department as a whole,
17 there's several reductions that we're facing, and this
18 is more just an FYI for the Commission at this point,
19 because you may be hearing about some of this stuff
20 coming around the horn from constituents. And so we
21 feel like you needed to be aware.

22 There is a hiring freeze in place, of course.
23 The biggest challenge that we're facing in some of the
24 state parks right now is we depend heavily on seasonal
25 staffing. And so here it is coming up on summer, a lot

1 of places are trying to bring on your summer staff, the
2 seasonal staff, and so far right now the freeze is in
3 place. And so far we haven't been able to get past that
4 freeze. We are working on an exemption to try to do
5 that, particularly places that are heavy summertime use.
6 So not so much Ocotillo Wells, but other places need to
7 bring on that summer staff to keep the parks
8 appropriately staffed, cleaned, all those things.

9 Another issue that we're facing right now is
10 going through an exercise statewide, all agencies --
11 we're not exempt from that -- looking at our cell
12 phones. They're all off right now, so they can't
13 take -- so that we're having to give up half of our cell
14 phones. All right. We can deal with that. That's not
15 going to kill anything. But they're also making us do a
16 very thorough look -- requesting us, I should say, to do
17 a very thorough look at our vehicle fleets. So we're
18 having to go through and spend quite a bit of time going
19 over records, endless records and justifying one vehicle
20 by -- you know, vehicle by vehicle for every vehicle
21 that we have. This is both the highway-licensed
22 vehicles, the off-highway vehicles, the tractors, the
23 graders, the dumps, just transport trailers. Every
24 piece of rolling stock we have, essentially, we have to
25 justify. Their goal is to get rid of as many of those

1 vehicles that aren't needed as possible. We keep
2 explaining to them that we're the Off-Highway Vehicle
3 Division and that sending the rangers out on foot
4 patrols isn't really effective, et cetera. So just a
5 process we're going through. So far it looks as though
6 the process won't -- I'm predicting, and I always hate
7 predicting, but it won't be devastating to us, but it is
8 difficult. So just if you hear things coming up about
9 they're taking all their vehicles, it's just a process
10 we're going through to justify the vehicles. We don't
11 know yet if they're going to take any. So...

12 DEPUTY DIR. GREENE: One of the things that we
13 do have to do at -- and interesting, we have to justify
14 the vehicles when we purchase them, so now we're going
15 through the process of justifying them again, which is
16 fine. But I think what it does, each month we have to
17 let the Department of General Services know how many
18 hours that vehicle is used, how many miles it travels.
19 And so it adds up after a while when you're trying to
20 get all the data. The interesting thing is, and this is
21 where I bring it up, is because as the Off-Highway
22 Vehicle Division of State Parks, there's also on the
23 State Parks side the Operation Division. And so part of
24 what Department of General Services is challenged with
25 is looking at us as two separate divisions but one

1 department. And so because of the funding sources, if
2 the Department on the Operations side has under-utilized
3 vehicles, then there might be the inclination instead
4 of having us purchase vehicles, we might use some of the
5 older vehicles on the Operations side or vice versa.
6 Operations side might want to get some of the new
7 vehicles from OHV Division. These are things that we've
8 dealt with in years past, but it is complicated. And
9 this year we're dealing with a new contractor the
10 Department of General Services has hired in to come do
11 this whole overview process. So as Phil said, it takes
12 a lot of time because you're looking at, for some of you
13 know, the Cal-PALs trailers that we have. Those house
14 the vehicles that we use for the PALs training. We just
15 have to go through that process of describing why you
16 need that trailer; then you're questioned as to why you
17 can't share that trailer with another district. Well,
18 it will cost more gas to get to the other district to
19 use their trailer. So it just becomes one of those
20 bureaucratic processes that's a bit challenging. But we
21 know the end goal is to -- somewhere, I think, in the
22 vicinity of 5,500 vehicles to have reduced. But it's,
23 you know, through the Department of General Services.
24 So it's just a challenge, but we'll stay tuned as to how
25 that all plays out.

1 CHAIR WILLARD: Okay.

2 DEPUTY DIR. GREENE: And on that note, I think
3 we can go to public comment.

4 CHAIR WILLARD: Okay. Great.

5 Commissioners, any final questions, thoughts on
6 directors' report?

7 Okay. Thank you, Deputy Director.

8 **AGENDA ITEM V - PUBLIC COMMENT PERIOD**

9 CHAIR WILLARD: Okay. We're going to open it up
10 for public comment. Now, this is on any item that is
11 not on the agenda with the exception of the reports. If
12 you want, I'll allow comments on the reports at this
13 time as well. So reports or something that's not
14 officially on the agenda. You need to fill out the
15 appropriate blue sheet and hand it over here to Vicki.

16 We only have two. Well, great. I mean that
17 will make it short and sweet. They're all holding their
18 powder for later, I think.

19 All right. Well, let's start with Bruce Brazil
20 on the reports, and followed by Michael Demaso.

21 BRUCE BRAZIL: Good morning. Bruce Brazil,
22 California Enduro Riders Association.

23 And on the grants process and the regulations,
24 there's a couple of suggestions I'd like to make for the
25 next round of possible modifications to the program.

1 First one, under the scoring, and it's an item that
2 might promote some efficiency from the agencies that are
3 submitting their request for grant funding, and that's
4 to have a scoring criteria that lists the percentage of
5 the actual on-the-ground work that's being done. How
6 much money is going to on the ground, the people that
7 are doing the work, the equipment necessary, the
8 materials necessary versus the overall grant request? I
9 know in this round of grants there's a couple of -- that
10 I notice where only about 40 percent of the grant money
11 was going to be used on the ground; the other 60 percent
12 was going to be overhead management-type positions. And
13 something like this would work in the restoration
14 sections, the ground operations where they're actually
15 doing trailer work, facilities maintenance and such, and
16 even law enforcement. How many of the law enforcement
17 people are actually out there doing the patrolling
18 versus their supervisor sitting in the office? I think
19 the program needs to have some efficiency aspects going,
20 and I believe this could be something that could be
21 instituted into the regulations.

22 Another item I would like to see on -- from the
23 agencies is what is their budget for the OHV Program.
24 And that's before they get any grant monies. So we can
25 see are we funding their whole OHV Program or just a

1 small part of it?

2 Next item that I have, we were talking about
3 acquisitions. And for the Division acquisitions, I
4 believe there's wording in the loan of the 21 million
5 that the governor wanted to borrow that says that the
6 state -- I think it's either the controller or the
7 treasurer may fund financial short-comings of the
8 OHV Program. So if there was property to be found,
9 you're short money, let's borrow that money back -- or
10 not borrow it back but get it back, if we can. Like I
11 say, the wording is very vague. Hopefully we can
12 utilize that wording to promote some acquisitions if
13 they are -- if they do become available.

14 Thank you very much.

15 CHAIR WILLARD: Michael Demaso, followed by Ed
16 Waldheim.

17 MICHAEL DEMASO: I'm Michael Demaso, President
18 of Merced Dirt Riders.

19 I've got an issue -- one small issue about the
20 grants. And I noticed a couple of foresters using cost
21 recovery to gain points on their applications. Our club
22 can't afford cost recovery so we can't put it on our
23 grants. So they won't have cost recovery, too. So I
24 don't believe that cost recovery should be in the --
25 some way to gain points on their -- on their grant

1 applications. The minimum scoring on grants, that's
2 another possibility to look at.

3 One other thing -- another thing I've got is
4 with the closing of the CCMA and with the new Land
5 Management Plan on the Mother Load BLM District, there's
6 two major districts in California that does not have any
7 OHV use. BLM is supposed to be a multi-use facility --
8 or properties. And we've got two major districts in
9 California right now that do not have any OHV. This
10 Friday and Saturday at BLM Central California Resource
11 Advisory Committee, they're having a meeting in Nevada
12 City. One of the things that's being brought up is the
13 CCMA and the minerals withdrawal which they are applying
14 for to try to close it under the minerals withdrawal.
15 So they're still trying to keep this closed even though
16 all the information lately seems to be pointing that it
17 should be open.

18 And thank you for letting me speak.

19 CHAIR WILLARD: Ed Waldheim, followed by Dave
20 Pickett.

21 ED WALDHEIM: Good morning, gentlemen, ladies.
22 Ed Waldheim.

23 Commissioner Kerr, congratulations on being
24 on the -- on the Commission. I'm of class of '83. I
25 was chairman in 1986 on the Off-Highway Vehicle Program.

1 In your sheet you'll see the list. So I bring with it a
2 lot of history, a lot of memory. And let me tell you,
3 the questions that you're asking, I've been there; I've
4 done that. And the new regulation that they put in kind
5 of took the thing away from us when we were on the
6 Commission. So you're kind of five years too late. I
7 wish you'd been on there before and helped us fight the
8 good fight to get things going.

9 My biggest problem I have with the Grants
10 Program and -- I call it "The OYA Team," under Sixto.
11 They do an incredible job, absolutely an incredible job.

12 The problem I have with the Bureau of Land
13 Management and the BLM, they are supposed to be
14 customers. We give them money. Yet both these agencies
15 don't take the time to give us the dignity of coming in
16 here and talking to us and telling us what they're
17 doing. I'm talking about Mr. Abbott and I'm talking
18 about Mr. Randy Moore. Those folks refuse to show up.
19 Probably none of you even know who these people are.
20 Yet they're getting millions and millions of dollars,
21 and they are baby-sitting our OHV Program --
22 baby-sitting. They are not managing our sport. And
23 that's where the problem is.

24 When you look at millions of dollars that are in
25 these grants, what are they putting on the ground? We

1 changed the law to make sure it's on the ground:
2 First-line supervisor only; the rest is management,
3 nothing. Yet we keep on having problems and getting on
4 the ground. It still is not being done. I almost feel
5 like we need to come up with a regulation or a process
6 that one of the Commissioners with a staff person sits
7 down and you pre-qualify that customer before he can
8 even put in a grant. What is your program? The
9 Waldheim budget, if staff will share that with you, I
10 have come up with a budget, what it takes to manage the
11 OHV Program in the State of California: \$34 millions or
12 \$47 million; the numbers don't change much after all
13 these years. I know exactly which each agency should be
14 spending to manage their program. But we don't go back
15 and look at it and hold them accountable. I know
16 because I do ground work. I'm one of those non-profits
17 that do it. And it's very hard for us to get the match.
18 We're talking about the match -- restoration is one of
19 the hardest ones. It's all labor how you get match on a
20 restoration when you don't have any equipment. It's all
21 labor. So we go to colleges and things like that to try
22 to get it done. But we need to make sure we get the
23 agencies.

24 Just now recently this BLM Office has sent a
25 team of rah, rah, rah folks to the Ridgecrest BLM

1 Offices to push for wilderness and WSAs. They've got
2 the staff all together in a room and says, "We need to
3 get wilderness going. We need to manage the WSAs."
4 Wait a minute, it's a multi agency. There's certain
5 employees who agree with wilderness; there's some people
6 who don't agree with wilderness. Yet they were able to
7 do that instead of coming here. What's our rah, rah,
8 rah for access to our public lands? This is what's
9 coming down from the heads of the agencies. They are
10 using us. Listen very carefully: They are using our
11 money for their own goal and not providing us the
12 services and the things for which we want: Access to
13 our public lands. That's been going on since 1972 since
14 we've been doing the grants. And I get really excited
15 or get really emotional about this thing because we,
16 you, Mr. Chairman, we have asked them to come. Cost
17 recovery, they now want 8,000 for us in cost recovery in
18 El Mirage for their ESCTA crew. There are no BLM people
19 at El Mirage. I'm running it all. There is nobody
20 there. They're gone. Yet they get a fee, they want a
21 cost recovery. It's out of hand. The agencies are out
22 of hand, and we need to do something about that.

23 Thank you.

24 (Applause.)

25 CHAIR WILLARD: Dave Pickett, followed by Tom

1 Tammone.

2 DAVE PICKETT: Good morning, Commissioners.
3 Dave Pickett, District 36 Motorcycle Sports Committee.

4 First out of the hull, thank you for holding
5 that emergency Commission -- Commission meeting
6 recently. That was a tough topic with the budget. And
7 our district applauds your effort in that arena.

8 Couple of comments here. Maybe Mr. La Franchi
9 can address this. Legal clarity on the Special Fund
10 versus General Fund. Earlier you talked about budget
11 cuts from Chief Jenkins, vehicles, cell phones,
12 temporary staff, my favorite, which I'll say again, is
13 unfair is the furloughs to Division staff. These are
14 non-General Fund monies and Operations, as was explained
15 by Deputy Director Greene and Jenkins. We the public
16 pay this Special Fund known as the Green Sticker Fund so
17 that just those kind of operations have funding
18 available. And I would look like to see the Division
19 fight back against the state on this because they're
20 taking State Parks as a department and applying their
21 process to the OHV Division, which is also part of State
22 Parks. The funding mechanism is in place. I think
23 there needs to have clarity there, not only for
24 Operations, but also to put those Division State Park
25 employees back to work. We need them there 40 hours a

1 week. That's Item 1.

2 Item 2, in AB95 it says it's going to take
3 \$833,000 a month. There's no ending date that I can see
4 in that legislation. Do you guys know if that's ongoing
5 or is it -- or the \$10 million is funded as a take?

6 Again, you heard earlier, cost recovery
7 continues to harm special permitted events. Non-profits
8 and clubs, they're going broke trying to recreate in our
9 own lands.

10 And last, the BLM, I don't know if you noticed
11 about the insurance hike that recently took place for
12 motorized events, the insurance premiums have doubled.
13 So you add cost recovery and insurance premiums, we're
14 going to be talking 100, \$125 entry fees, and that's
15 ridiculous for use on public land.

16 Thank you.

17 CHAIR WILLARD: Tom Tammone.

18 TOM TAMMONE: Tom Tammone, (unintelligible)
19 Division. Good morning.

20 First of all, as far as what was brought up
21 earlier, the frustrations over the lack of land
22 purchases, in the past I have asked the Commission to
23 appoint a committee to look into it, both on the
24 acquisition projects that are not getting put in --
25 we've had one or two projects on some of these yea'rs.

1 We use about 10 percent of the funds. And on the
2 Division side, we have a lot of frustration. I
3 personally have expressed and friends of mine have, too,
4 that it seems like Division doesn't even want to try,
5 from our perspective.

6 You know, what could be done to -- if it is an
7 appearance, what could be done to eliminate that as
8 appearance? Could you give us some information on what
9 projects are on the table, what's the status with them,
10 what's being done with them? I remember when
11 Director Greene first took office. The challenge was
12 what are we going to do about the lousy ratios as far as
13 what's going to be used for motorized versus
14 non-motorized. Then after the audit came down, they
15 basically said, Well, we're just -- we just can't do any
16 more, I guess, because we can't get a percentage that's
17 within what's going to be allowed under our laws and
18 regulations. So what has happened? Have we given up on
19 Division land purchases? A lot of us sure have that
20 opinion, and we've expressed a lot of frustration over
21 it. But my challenge to you is to show us what you're
22 doing about it.

23 Thank you.

24 CHAIR WILLARD: Okay. We normally hear reports
25 from BLM and U.S. Forest Service. And I see

1 representatives of those agencies in the audience. I
2 want to thank you for coming. We didn't have you on the
3 agenda because we thought we might be tight on time. It
4 looks like we're actually in good shape. Don't want to
5 put you on the hot spot here, but if you've got
6 something you want to say to us, you're welcome. And if
7 not, that's perfectly fine, too. I understand because
8 you weren't on the agenda. So if you've got anything.
9 If not, again, it's no big deal. Just want to make the
10 offer.

11 DEPUTY DIR. GREENE: Or they maybe think about
12 it.

13 CHAIR WILLARD: Sure.

14 DEPUTY DIR. GREENE: If I may, just on a couple
15 points, unless -- initially. If I may just --

16 CHAIR WILLARD: Please.

17 DEPUTY DIR. GREENE: -- respond to a couple of
18 things.

19 I think, with all due respect to Mr. Waldheim,
20 that we need to keep in mind that, as far as I know,
21 this Commission has never formally invited either BLM
22 Director Jim Abbott or Regional Forester Randy Moore to
23 a Commission meeting. So I think in due fairness, if
24 that invitation was ever extended, I would anticipate
25 that those individuals would do -- make every effort to

1 get to this Commission.

2 And then, secondly, just if I may for a moment
3 be able to address the issue of acquisitions because I
4 know it's troublesome and I do need to -- so you
5 understand a process that we have to go through and how
6 that is difficult for us.

7 Typically, as we identify parcels of land that
8 we may want to acquire, we have to go through an
9 internal process where we would put together something
10 that says we want to acquire this piece of land. That
11 then needs to move through our chain. It goes to the
12 Resources Agency, and ultimately it goes to the
13 Department of Finance, to make a determination whether
14 or not there's enough funding within the budget to have
15 that acquisition project move forward. This is all done
16 before the governor releases his or her budget, January
17 10th. So all of that is background noise. If we share
18 those processes with you, we then are not -- we're not
19 allowed to share them. It's confidential because
20 nothing is public until the governor's budget goes out.
21 So I share the frustration that we oftentimes are not
22 able to share exactly the formal process what we may be
23 doing. Of course, there are individuals that perhaps
24 may know, but that is not to say that we aren't working
25 hard. We're working very hard. And I think that that

1 is proven out in the money that was approved for the
2 purchase of the Onyx properties down in Southern
3 California. So I would say that we have demonstrated
4 that we are working very hard to acquire the land; we
5 just can't share it.

6 And so it is very frustrating for us,
7 particularly, I will say, this year when we look at that
8 \$21 million being borrowed. It was heart-breaking. But
9 that being said, it is what it is, and we have to work.
10 So we count on you and the members of the public to make
11 sure that your voices are heard.

12 And that being said, I think, also, which you
13 are certainly aware of in our Strategic Plan, we've
14 identified that land acquisition strategy, our desire
15 for urban parks. And certainly here you've heard from
16 members of the public about in San Jose, urban park
17 development and potential for OHV recreation, we've had
18 staff at those meetings supporting those projects. So
19 it really is something that's very important to us as we
20 look at other opportunities being closed throughout the
21 state.

22 CHAIR WILLARD: Yeah, I think from the public's
23 perspective it looks like there's nothing going on --

24 DEPUTY DIR. GREENE: Right.

25 CHAIR WILLARD: -- in acquisitions, when we know

1 that that's not the case. In fact, unfortunately there
2 were, what, two or three really strong potential
3 candidates for acquisition that were being worked on
4 until we had our funds appropriated. But yeah, things
5 are moving forward. It's just that it can't be
6 discussed at these meetings at least.

7 Commissioner Kerr.

8 COMMISSIONER KERR: I just want to congratulate
9 the staff. I know that additional land is very near and
10 dear to the staff's heart. All I'm saying is when you
11 look at the Grants Program, we're under-funding
12 acquisitions. So I'd like just to suggest that maybe we
13 need to change the criteria, do more outreach. Maybe
14 some of the projects in the future are going to have to
15 be funded -- like, for example, the urban park in
16 Santa Clara County, which we know is near and dear to
17 the heart of many Commissioners and is a somewhat
18 under-served area, that maybe we need to think about
19 innovatively using the Grants Program, particularly the
20 million dollars or more that's not going out this year.
21 If we can't do it this year, then learn a lesson for
22 next year. But I think we're under-funding acquisitions
23 in the Grants Program.

24 CHAIR WILLARD: Yeah, I think that's just
25 because of the nature of the applicants. Historically,

1 more applicants have been agencies that don't need to
2 acquire land; they've already got their own land, and we
3 need only to help take care of it. But there is the
4 ability for non-profits to make application for land
5 acquisition. And I think you make a good point about
6 maybe we need to do some outreach, maybe we need to help
7 people become more aware that the funds are there for
8 acquisitions for non-profits.

9 DEPUTY DIR. GREENE: Right. And I think I was
10 speaking more to the Division expanding the system of
11 the SVRAs --

12 COMMISSIONER KERR: The SVRAs, right.

13 DEPUTY DIR. GREENE: -- recognizing that it's
14 been decades, with the exception of Heber Dunes. But,
15 really, it has been decades since we have been able to
16 move forward. That being said, the Onyx property, we're
17 moving forward to see if we can try and acquire that
18 property. So that's something that we have --

19 CHAIR WILLARD: Yeah, I know there's two parts
20 of it. There's the SVRAs, which I understand that we
21 were moving forward with some really nice potential
22 expansions of that program, but unfortunately with no
23 funds it's tough to do. But I think Commissioner Kerr
24 has pointed out, you know, there is the Grant Program.
25 So the OHV Program is all about maintaining and

1 enhancing, increasing recreational opportunities
2 throughout the state. So that means not only at the
3 SVRAs but also on other lands. And if a non-profit
4 could put together some sort of a private park or
5 semi-private, then I think the Grants Program funding is
6 appropriate. That's an appropriate use of those monies,
7 to expand the program. So I would agree with
8 Commissioner Kerr.

9 CHIEF JENKINS: And just a last thought to round
10 out the possibility for the future, the grants isn't the
11 only way to do acquisitions outside of our SVRAs. There
12 is the possibility of at various times there's been
13 legislation passed that could use trust fund monies to
14 acquire land for a given agency. So there is the
15 legislative process -- budget process, if you will,
16 submitting it as a trailer bill. There's also other
17 mechanisms we can use: Directly agency to agency with
18 specially appropriated money outside the Grants Program.
19 So that the Grants Program is one way, and I certainly
20 agree that we need to look at that. And then there's
21 other ways that we might also expand our ability, our
22 flexibility to find ways to acquire new properties.

23 DEPUTY DIR. GREENE: And just keeping in mind,
24 in concluding, that the most recent was not only
25 Heber Dunes but also the land at the Freeman property

1 down in Ocotillo Wells; so the old Truckhaven property.
2 So that legislation went through as well, and
3 Superintendent Donilar briefed you on that. And so that
4 moved forward. So we've acquired that land, and
5 Anza-Borrego has acquired the lands in the north.

6 CHAIR WILLARD: Okay. Thank you.

7 Let's move on to the budget update. Oh, I'm
8 sorry. Jim Keeler of BLM would like to say a few words.
9 Please.

10 JIM KEELER: I'm Jim Keeler, Bureau of Land
11 Management, California State Office.

12 I don't have a prepared statement anymore. I
13 threw that out when it was told it wasn't necessary. So
14 I'm going do my best to hoof it, and that makes me
15 uncomfortable because I like to get this stuff vetted
16 before I make it public. But that all being said, I
17 have four or five minor items.

18 We're working really hard right now. We had a
19 remedy order on the litigation in the West Mojave. And
20 the West Mojave is an area about the size of Vermont in
21 the California desert. So it's a huge project. We --
22 the order -- essentially, after we did the last West
23 Mojave Plan, it was litigated and the designation
24 process we used was declared not good enough. So we've
25 been ordered to redo the route designation by 2014. I

1 think it's 11,000 miles of routes. On the short term,
2 we've been asked to use the existing network as an
3 interim network. So we have 180 days to get that all
4 signed and interim maps put together. So we're hustling
5 and getting that stuff done in order to calm the judge
6 down and not to inflict further damage on ourselves.

7 There's new energy right now that we finally --
8 things got so bogged down in El Centro because of the --
9 all the alternative energy that we ran out of energy on
10 finishing the ramp for the Imperial Sand Dunes. They've
11 sent a new project manager down there to get that moving
12 again. So that should be -- you should be seeing some
13 daylight on that.

14 Mike Ayers, who was my counterpart in General
15 Recreation, has been replaced by Cathi Bailey. He
16 retired; she moved down from Oregon. Cathi is getting
17 very much involved right now in the permits and Cost
18 Recovery Program. So there will be another whole
19 resource available. And I'll try to get her to one of
20 these meetings to talk about what she knows and
21 introduce her. I'm glad to have a new body. It's
22 working out for us that she and I work really well
23 together. So we're going to try to kind of blur some
24 more of the lines between non-OHV recreation and OHV.
25 So I think -- I'm looking forward to her participation

1 in this.

2 Last item I did want to mention, by the way, we
3 do have Williams Hill here in Hollister. I know it's a
4 little tiny area, but there is some active permitted OHV
5 there.

6 We are also in the final landing stages of a
7 Draft Resource Management Plan for the Bakersfield field
8 office area, and that will also include some route
9 designation and a hard look at some potential stuff west
10 of Taft in the Temblors, if we can manage that properly.
11 So there is some positive stuff even in BLM going on.

12 Thank you.

13 CHAIR WILLARD: Thank you.

14 Yeah, Commissioner Slavik.

15 COMMISSIONER SLAVIK: Jim, glad to see you here.
16 Glad to see you here, Jim. I have a question on Ed
17 Waldheim's concern about El Mirage and the cost recovery
18 there. Can you explain a little bit about where the BLM
19 is coming from there?

20 JIM KEELER: I can't. I'd be happy to research
21 and work with you and bring a report to the next meeting
22 if that's okay.

23 COMMISSIONER SLAVIK: Sure.

24 JIM KEELER: And I'll talk to Ed about it, too.

25 CHAIR WILLARD: Okay. Thank you.

1 JIM KEELER: Thank you.

2 CHAIR WILLARD: Deputy Director.

3 Oh, great. We have the U.S. Forest Service.
4 Excellent.

5 KATHLEEN MICK: Good morning, Commissioners --
6 excuse me -- members of the public and the Division
7 staff. I'm Kathleen Mick. I'm the Regional Trails,
8 OHV, and Program lead for the U.S. Forest Service out of
9 Vallejo.

10 And I'd like to start off by saying that we have
11 in the past had our leadership here at these meetings.
12 Tom Tidwell, who is our current chief of the Forest
13 Service, used to attend these meetings regularly with me
14 when he was deputy regional forester. We've also had
15 these meetings attended by our past Director Marlene
16 Finley, as well as our current Deputy Director Mike
17 Miller, who was at the last meeting with me. That was
18 the emergency meeting -- excuse me -- about the budget.

19 I -- I can't speak for the regional forester in
20 terms of his schedule, but I think that if that's
21 something that the Commission wants to do is to extend
22 an invitation to our regional forester that he would
23 make every attempt to make it here or assign one of his
24 deputies to attend the meeting. You know, we have one
25 regional forester and three deputies for 19 -- about 18

1 national forests and 20 million acres. They keep
2 themselves pretty busy with, you know, dealing with
3 congressmen, trips to Washington, things like that. I
4 mean I'm sure you're all following the news of what's
5 going on with our budget with the fire, et cetera. So
6 it's not as though they don't think the OHV Program is
7 important, but they trust their director of Recreation,
8 their deputy director, and me as staff and lead for the
9 program to make them aware of issues and also, at times,
10 speak for them. And they have a great deal of trust in
11 us and our abilities to handle any of the issues or
12 programs that come up. But, again, if it's something
13 that you have a huge desire for, then I would certainly
14 recommend that you extend that invitation to him, and
15 we'll see what we can do to get him here.

16 Excuse me. With that said, as well as Jim
17 Keeler, we did have a prepared report to give. We
18 didn't bring that report because we weren't anticipating
19 that we would be speaking. But I did try and sit with
20 Keaton, who is -- works with me as my assistant --
21 Keaton Norquist -- and try to jot down a few things just
22 to kind of give you some high points of what we've been
23 up to since the last time that we gave a report.

24 Excuse me. So many of the field units have --
25 as you're well aware, the weather's been -- you know, we

1 had an extraordinary winter. So although it's not part
2 of the Grants Program, the field units have been doing a
3 lot of work with grooming snow trails, providing OSV
4 opportunities, working with the Division staff to
5 maintain that program. As you may be well aware, the
6 OHV Division did an EIR on the Snow Program this year,
7 and we worked in collaboration with them to help them
8 the best that we could with that document. Oh, and with
9 that we've been working with the Division staff, Connie
10 Latham and Terry Harper, to implement a monitoring
11 program that's in correlation to the Snow Program. And
12 then as a result of some of the litigation, which I
13 won't speak about, we've had some inquiries about
14 information and lots of Freedom of Information Act
15 requests over the Snow Program. So at my and Keaton's
16 level, that keeps us pretty busy interacting with the
17 Forest to provide that information.

18 Some of the forests that don't have snow
19 programs have been doing a lot of trail maintenance.
20 There have been some closures this winter in a couple of
21 forests, particularly the Eldorado and the Mendocino
22 because of the extraordinary winter that we had.
23 There's been a lot of breakdown in trails, so they've
24 been utilizing their grant funds to do maintenance and
25 get the trails in shape for what is now the riding

1 season on some of the forests. And then, of course, for
2 some of the higher-elevation forests, that riding season
3 actually ends up to be at high elevation in the
4 summertime.

5 We've been working very hard on implementing
6 Subpart B, which are the designations that we made. And
7 whether you agree or disagree with the way we went about
8 Subpart B and designating routes, every forest did add
9 routes to their system. And so what they're doing now
10 is currently going out and trying to maintain those
11 routes to standard. They're also going out and trying
12 to do the mitigations -- the environmental mitigations
13 that are needed to add those routes to the system so
14 they can then portray them on their Motor Vehicle Use
15 Map when they print them. We've also been making some
16 of the Motor Vehicle Use Maps, and you'll see a couple
17 of those coming out on some additional forests here in
18 the next probably month or two. We just completed --
19 after a long time working on it and working with some
20 pretty bad data, just got the Motor Vehicle Use Map done
21 for the Los Padres. So that will be probably on the
22 street to the public, I'd imagine, in the next 30 to
23 45 days. And then in addition to that, we have been
24 working on some, what we're calling, Motor Vehicle
25 Opportunity Guide Maps. And we do that in our regional

1 office. We've had a grant through the OHV Division in
2 the past. And what we try and do is centralize the
3 map-making so instead of all 18 national forests asking
4 for a grant and then turning around and giving the money
5 to the regional office to the contractors and staff that
6 work with our Geospatial Services to make maps, we've
7 tried to streamline that for efficiency. So we just
8 concluded making the maps for the Los Padres to
9 Santa Lucia District. And the one for the Mt. Pinos
10 District will be coming out soon.

11 And then the Eldorado National Forest, after
12 quite a time at trying to get that map correct with
13 their data, their map should be hitting the street
14 within a couple of weeks, which has been long overdo,
15 but something that the OHV community has really wanted.
16 And what's different about the Eldorado map is that we
17 tried to do something different. Each forest likes to
18 represent their areas in a different way. So, for
19 instance, I think Commissioner Lueder's familiar with
20 the Mendocino's Use Guide Map, and that portrays just
21 the OHV riding area as opposed to all of the district or
22 all of the forest. And the Eldorado really wanted to
23 show not only the consolidated areas where there's OHV
24 trails, but they also wanted to show where there's more
25 opportunities for riding of like, say, dual sports. And

1 then also they wanted to provide kind of a multipurpose
2 map that would also demonstrate the non-motorized
3 trails. So we worked with the Division to make sure
4 that that was okay. And so what's really cool about the
5 Eldorado map is it's a trail map, and that's good for
6 motorized and non-motorized uses, portrays each district
7 in its totality. And I think that the public are really
8 going to enjoy those maps and find them very, very
9 useful in their trip planning and travels.

10 Another thing that's been keeping us pretty busy
11 in the field and then also in the regional office is the
12 ongoing work with the Rubicon Trail. There's been a lot
13 of interaction, and I think Daphne and her staff were
14 just at a meeting recently where our deputy regional
15 forester was there at a meeting with the Division, the
16 county, the SHPO, the forest to try and work through
17 ongoing issues on the Rubicon, get that work concluded,
18 have the county, you know, get out from under in their
19 cleanup and abatement order. So that work on the
20 Rubicon is ongoing.

21 Another thing that we've been doing is
22 working -- because of the extraordinary winter that
23 we've had, we've had several forests be in a condition
24 where they had to impose wet-weather closures on their
25 trail systems. So we've been trying to look at new ways

1 to do that, maybe ways that are not so much rooted in,
2 say, the precipitation amounts, but how the
3 precipitation affects the soil, soil moisture and the
4 ability for our trails to hold up under use and
5 saturation. So we've been working a lot with Trails
6 Unlimited, which is a Forest Service Enterprise Team.
7 They're Forest Service people, but they're kind of a
8 side contractor. And we've been working with a retired
9 Forest Service soils scientist. And they did some work
10 in Texas, and now they're trying to replicate that work
11 on the Los Padres. So they've been working on the
12 Santa Lucia District with Bruce Winter and some of the
13 other OHV community to bring the Forest field folks and
14 the OHV community together to do some testing of the
15 soils in saturated conditions out in the field to see if
16 we can get a better handle on how to do closures and
17 have minimum closures, still protect the trails and the
18 soil resource, but then allow for as much utilization of
19 the trail system by the public as we possibly can. So
20 we're looking for new ways to do that.

21 Which leads me to the grants. We applied for
22 several grants out of the regional office, one of which
23 is to continue our soil wet-weather studies and trying
24 to find new ways to do that. We have a couple of other
25 grants, map making, to continue on with our Motor

1 Vehicle User Guide Maps that will help the public to
2 understand the Motor Vehicle Use Maps, which are not
3 very good. And then also a grant to try and look at
4 some destination sites. And this is something that we
5 worked with, again, the Division on, Dave Pickent and
6 Don Amador, to try and look at a strategy to deal with
7 how to better provide events and avoid the cost recovery
8 conundrum that we're in right now. So we're looking for
9 a way to -- we put in a planning grant to try and
10 strategize. And this is something that Don Amador met
11 with Randy Moore, Regional Forester, about. And so
12 we're trying to do that.

13 And then lastly, we've been just working on the
14 litigation on some of our Subpart B route designation,
15 EIS, zoning the Eldorado, the Stanislaus and the
16 Klamath.

17 And then the final thing is that we have had a
18 change in personnel in our Recreation staff. Many of
19 you that know Marlene Finley, she has now left the
20 region as of February, and she's now the deputy regional
21 forester in Region 4, which is Idaho, Utah and Nevada.
22 And so we not only have our deputy director position
23 open, but we have our director position open. So we
24 have some temporary folks in there. They just made a
25 selection on our deputy director position, and we have a

1 gal by the name of Maria Lisowski that will be joining
2 us from the Alaska region along about May or June. And
3 she'll be coming into the regional office as our deputy
4 director. And then our director position is still
5 vacant, and they'll be filling that. So you'll have to
6 bear with us in terms of leadership for the Recreation
7 staff. We're dealing with people that are temporarily
8 helping us out. And once they get some permanent
9 selections made, then we'll kind of get back on track,
10 so to speak.

11 So that's all I really have, unless anybody has
12 any questions.

13 CHAIR WILLARD: Thank you, Kathy.

14 Questions?

15 Commissioner Silverberg.

16 COMMISSIONER SILVERBERG: Thank you for the
17 report, Kathy.

18 KATHLEEN MICK: You're welcome.

19 COMMISSIONER SILVERBERG: Thank you, Kathy, for
20 the report.

21 I noticed a theme this morning and all the
22 public comments seemed to engage this matter of cost
23 recovery, and it sounds like the National Forest is
24 working on that. And so this is also directed to Jim
25 Keeler, too. Is it possible that, as you are looking at

1 that, maybe by our next meeting you could have
2 information to provide on that? Because it seems like
3 it's very vague right now. And it's been an issue that
4 we've heard from the public on for the last year, and I
5 feel like we've -- there's been no traction yet to kind
6 of solve the dynamic that's going on with cost recovery.
7 And it's very prohibitive, too. It sounds like lots of
8 local events are not happening anymore. So it's very at
9 the front of a serious matter right now. And it seems
10 like there's not been too much done about it yet. So I
11 guess I would ask that by the next meeting we have some
12 information from National Forest and from BLM to just
13 look and see what is really happening with it. And
14 that's what I would ask.

15 Thank you.

16 KATHLEEN MICK: Cost recovery is a continuing
17 issue, for sure. I know that the regional foresters met
18 with, for instance, Congressman McClintock about cost
19 recovery particularly. It's something that we were
20 really making, I think, some end roads in. And Daphne
21 hosted a meeting at the OHV Division for us to try and
22 talk about that with Don Amador and Dave Pickett from
23 AMA as well as a couple of representatives from some
24 local clubs were there.

25 I wouldn't say we're stalled out on it right

1 now, but we're kind of moving at a slower pace because
2 we did lose Marlene who was championing that effort, and
3 we don't have a permanent director right now. So it's
4 something that we're continuing to work with the forest
5 on. One of the things that we have done is try -- in
6 the regional office, we have a recreation special use of
7 staff. So one of the things they've been trying to do
8 is, as a proposal comes into a forest or a district and
9 they go through their cost recovery worksheets and do
10 those estimates, we've been trying to ask them to review
11 them at their supervisor's office and then also send
12 them into the regional office for review. And there
13 have been a couple of cases now where we've looked at
14 the cost estimates, and they appear to be a little bit
15 high. And so we found ways to reduce those down. So
16 that's something that we've been working on.

17 The other thing we've been working on that's
18 also going to tie into this strategy piece is looking at
19 things that have already had environmental analysis.
20 Although they haven't had environmental analysis for the
21 purpose of, say, an enduro and the specific intensive
22 use that would happen during an enduro, it's been, say,
23 an analysis for everyday typical use. But we're trying
24 to look at some of the analyses that we've done and see
25 how we can at least utilize some of that if we do have

1 to do more environmental documentation, how we might be
2 able to reduce some of the costs by looking at or
3 tiering off of work that we've already done, and then
4 also looking at our own internal policies and directives
5 and seeing what we can do to make the process easier.
6 Some of that is within our control, and some of it is
7 not. But we're certainly looking. And that is one of
8 the reasons that we put in for that grant is to -- Randy
9 wanted us to look at perhaps a way to strategize for
10 what we're calling the destination areas. Because
11 almost every forest has OHV opportunity in some form or
12 fashion, but then we have these areas that get intensive
13 OHV use, say, the Mendocino or Rock Creek on the
14 Eldorado or the Miwok District on the Stansilaus,
15 Santa Lucia, Mt. Pinos on LP. So those are kind of
16 areas for the OHV community that are destinations not
17 just for day trips but for overnight or a couple-day
18 trips. And so how we may be able to identify those
19 areas as a pilot and do a couple key areas and do some
20 analysis that would then eliminate the need for the cost
21 recovery -- so we're trying to think out of the box.
22 Those are some of the things we have on line.

23 But in terms of the next report, I can try and
24 share with you what we're continuing to do. I just
25 don't want to build an expectation with you that we

1 can't fulfill because we don't have a permanent
2 director. So as staff, we can only go so far out of the
3 box because we don't know what the emphasis areas for
4 the next director are going to be. And they may come in
5 and say, Well, I want to deal with cost recovery in this
6 way, and our past director wanted to deal with it this
7 way. So we have some leeway, but I think you understand
8 what I'm saying. So we'll do the best we can, for sure.

9 COMMISSIONER SILVERBERG: No, and I appreciate
10 that you're looking at that. And I would just add on
11 the same lines of thinking, you mentioned that certain
12 clubs have been putting on events for upwards of 30 --

13 KATHLEEN MICK: Fifty years?

14 COMMISSIONER SILVERBERG: Yeah, 30 and 50 years.

15 KATHLEEN MICK: The Cowbell on the Medocino, I
16 think, is like 56, 7 years old, yeah.

17 COMMISSIONER SILVERBERG: Right. And I'm
18 thinking that -- I want to say that the clubs are using
19 really quite a bit of the same part of the facility.

20 KATHLEEN MICK: That system rocks.

21 COMMISSIONER SILVERBERG: Yeah. And so it seems
22 that the EIS studies would be able to be looked -- that
23 they don't have to be reviewed in its entirety each
24 year, whereas one property, if they're using the same
25 trails and the weather conditions are similar, you'd

1 think it would sort of hold up year after year unless
2 there's been some major change.

3 KATHLEEN MICK: Yeah. And that's one of the
4 things that we're looking at. And the other thing, part
5 of the conundrum has been that a lot of the clubs got
6 yearly permits and our regulatory scheme changed so that
7 now if it's a recurring event, then it changes from the
8 temporary permit category now to a requirement to have a
9 five-year permit. And that's what's causing the angst
10 is if you came in with a brand-new event one time, you
11 could get a temporary permit, do your event, and then go
12 about your way. But the minute you want to come back
13 and have that event recur year after year, it kicks it
14 into a different category with a different set of
15 analyses. And that's where the angst with cost recovery
16 has come from is moving from the one-year category to
17 the five-year category. So that's the whole point of
18 the strategy is to look at, okay, well, it's still the
19 same activity sometimes on system routes. So what can
20 we do to not skirt any of the environmental
21 requirements, but perhaps look at things in a different
22 way? Do we have some flexibility, and, if so, what is
23 that flexibility to make things -- to have a less
24 financial burden on the club? So that's what we are
25 trying to do. And I know from the outside it may not

1 seem like that because at times we have a tendency to go
2 very swiftly. But we are looking at it.

3 CHAIR WILLARD: Commissioner Slavik.

4 COMMISSIONER SLAVIK: Kathy, question about the
5 contribution of volunteer hours for these clubs, has
6 that come up in your discussions as well? I think you
7 were here when we talked about that several meetings
8 ago.

9 KATHLEEN MICK: Yeah, I'm not sure what your
10 question is.

11 COMMISSIONER SLAVIK: Whether it's appropriate
12 for you guys to consider the contribution of volunteer
13 hours that these clubs put in during the year and apply
14 it toward the cost recovery of an event they want to put
15 on specifically.

16 KATHLEEN MICK: It's part of the discussion and
17 part of some of the things that we're investigating.
18 But there's not a decision as to yes or no, whether it
19 can be done or not. Because typically the clubs are
20 coming in, doing -- helping to leverage the declining
21 budgets that we have for regular routine trail
22 maintenance. Sometimes they are the same trails that
23 they're using for their events. So that is one of the
24 things that we're looking at is can we offset that in
25 any way; do our rules and regulations allow for that.

1 So it's something that we're looking into. But yeah,
2 there's not a decision yet on that. But we're aware of
3 the question and trying to figure out.

4 CHAIR WILLARD: Good. Great. Well, thank you,
5 thank you --

6 I'm sorry. Commissioner Kerr.

7 COMMISSIONER KERR: When you get that map done,
8 it sounds like the Eldorado map's kind of interesting.
9 I'd like to request that you copy the Commission members
10 with -- send a copy of it -- or at least send one to me.
11 I'd like to look at it.

12 KATHLEEN MICK: Yeah, we had hoped to bring some
13 with us to the meeting, but we haven't received -- the
14 boxes are kind of in transit. And we were really hoping
15 that we would have them because they went to the
16 printer. But some of them go to the forest, and then
17 some -- we like to keep a few sets in the regional
18 office. So yeah, next time I'm here I hope to have some
19 copies not only for the Commission but for the public
20 that's attending the meeting as well as the Division
21 staff. And I'll make sure that I make a note of that,
22 to get you those maps.

23 CHAIR WILLARD: Okay. Again, my apologies for
24 putting you guys on the spot, but you did a great job.
25 So thank you.

1 KATHLEEN MICK: You're welcome.

2 **AGENDA ITEM VI (A) - BUSINESS ITEMS**

3 CHAIR WILLARD: Great. Deputy Director moving
4 forward to the next business item, the 2011/12 budget.

5 DEPUTY DIR. GREENE: Correct.

6 Thank you, Commissioners.

7 So this is the issue that we had the special
8 meeting on March 14th to address the proposed actions by
9 the legislature. At our last meeting it was agreed
10 that -- the Commission gave direction that they would
11 like to write letters to the legislature regarding this
12 issue. I appreciate Chairman Willard's dedication to
13 that effort. He had a letter turned around in a very
14 timely manner. Unfortunately it wasn't quickly enough
15 as we were going to finalize that because, in fact, on
16 March 17th, they voted to pass that trailer bill
17 language. So you'll have in your packet for any --
18 obviously the Commissioners and members of the public
19 where it outlines the actions that were taken.

20 Where we are now is that the legislature moved
21 forward with, essentially, "the take" to a question
22 earlier. It is ongoing of \$833,000 a month that goes
23 from now -- goes from the Motor Vehicle Fuel Account.
24 It does not even come into the OHV Trust Fund. So that
25 was passed the 1st. And as you look at this, what I

1 think was a little disheartening is that applies to the
2 budget year 2010, so that the money was taken out
3 April 1. That \$833,000 already started being taken. At
4 this point in time, there is no end date.

5 Obviously this is something that is causing a
6 lot of concern. With that take, the impact is a
7 \$5 million reduction to the Grants Program and a
8 \$5 million reduction to our Operations budget. So right
9 now we're, as Phil alluded to earlier, trying to figure
10 out discussions with Finance, what that looks like in
11 terms of the Grants Program, and then certainly from an
12 Operations standpoint what that looks like.

13 So as we look at the entire department, what
14 that means in terms of potential layoffs of staff, as we
15 heard at the last meeting on the Operations side, also,
16 that there were actions taken outlining the criteria for
17 closures of the State Park units on the Operations side.
18 Although, interestingly, if you look in your packet,
19 what were included in that is 278 State Park units, we
20 have 8 of those. So in the long run, the worry would
21 be, and this is something that we all need to consider,
22 if, in fact, the take were to expand year after year,
23 this year 10 million, next year 20 million, 30 million,
24 at some point the impact will be devastating to the
25 Division. So the question then becomes what happens

1 then? And so that is something that I think is of real
2 concern.

3 Also passed in that trailer bill language was
4 the \$21 million borrowed, and that was to fill the gap
5 that was identified last year by Governor Schwarzenegger
6 to move forward with the sale of eleven buildings that
7 would help fill that gap in the budget year, but it was
8 decided this year that that wasn't really the best and
9 most thoughtful decision. And so, therefore, they
10 didn't want to sell those buildings, but you have a gap
11 that needs to be filled. And we included in your packet
12 a list of all the different trust funds that were swept.
13 It is interesting to see. All of those were swept and
14 borrowed to fill that gap.

15 As we move forward now in the budget process,
16 the trailer bills that were signed by the governor fill
17 in, I think it's approximately an \$11.2 million deficit.
18 There's still is outstanding a 12.6 billion hole that
19 needs to be filled. And so obviously there's been
20 ongoing discussions that we've heard about whether or
21 not there would be an initiative that would go on the
22 ballot where the public would be asked to have the tax
23 that's currently paid by the public, would continue to
24 go on or whether or not there might be some other
25 revenue-generating mechanism. Certainly it's of concern

1 to us, as we know that take of 10 million has been
2 established; so, essentially, that fire wall has been
3 broken.

4 So at this point what we would propose is that
5 we would still move forward with the letters, but this
6 time now since the 2010 budget action has been taken,
7 that we would be writing on behalf of the 2011 cycle.
8 So we'll get that moving and finalized. But certainly
9 it's of concern to all of us of where we stand now and
10 as we move to the future.

11 So that's the update.

12 CHAIR WILLARD: Okay. Thank you.

13 Yeah, definitely a huge disappointment to have
14 things move so swiftly and then to move in the direction
15 we didn't want to see it move in.

16 DEPUTY DIR. GREENE: The other one point, if I
17 may, and I apologize for the interruption, there has
18 also interestingly been, as both sides are looking at
19 coming to the table, that one of the items that was
20 indicated on a list of negotiation topics was bringing
21 that \$10 million back into the fund. So nothing's ever
22 finalized, but that has been identified as one of the
23 budget items for discussion.

24 CHAIR WILLARD: So since the budget isn't really
25 100 percent done, I think it is appropriate for us to

1 continue with getting that letter out. And we probably
2 need to word smith it a little bit to make it more
3 current with the state of events that have occurred
4 since I wrote the letter, which was the day after the
5 meeting. But I think we should move forward.

6 So I guess --

7 COMMISSIONER KERR: Could we ask the attorney
8 general for --

9 DEPUTY DIR. GREENE: That was moving through the
10 process as well. I can't simply go to the attorney
11 general, so we're moving that through the resources
12 agencies and then the governor's office.

13 COMMISSIONER KERR: That's an impediment that
14 you have as staff working for the state of California.
15 I thought we had asked that the Commission send a letter
16 to the attorney general asking her whether this was --
17 now that you have the language in the bills, which were
18 signed by the governor, certainly I think it's
19 appropriate to get an opinion rendered. I don't see why
20 the Commission can't simply write a letter from the
21 Commission.

22 DEPUTY DIR. GREENE: And the only thing there, I
23 would say, is I just want us to be cognizant, in terms
24 of the Commission, if you can recall, under the former
25 administration, when the State Parks and Rec Commission

1 moved forward with writing a letter, some of those
2 commissioners were not re-appointed. So I just want to
3 be cognizant of the fact that --

4 COMMISSIONER KERR: Well, you know what? I'll
5 take the risk.

6 DEPUTY DIR. GREENE: Okay.

7 COMMISSIONER KERR: I mean, personally, I would
8 like to hear how the other Commissioners feel, but if we
9 can't even write a letter to the attorney general about
10 this, then I don't feel that we have a purpose.

11 DEPUTY DIR. GREENE: And as long as you
12 articulate that, I'm fine. I just want to be cognizant
13 and respectful of you as Commissioners.

14 CHAIR WILLARD: Are there any viable
15 alternatives to seeking a determination from the AG? Is
16 there a legislative council perhaps?

17 DEPUTY DIR. GREENE: Well, I think oftentimes
18 the public, also, can write to the attorney general, and
19 perhaps if it was done in junction with the letter.
20 Like I said, I have no problem trying to move it
21 forward. I just want to be cognizant of this
22 Commission.

23 CHAIR WILLARD: Attorney La Franchi, could you
24 please chime in on what the ramifications of that would
25 be?

1 ATTORNEY LA FRANCHI: This is a new question
2 that has not come up. Historically there's some
3 precedent for the Commission to have asked the attorney
4 general for its own counsel. There was one period in
5 time where the general attorney had an AG appointed to
6 represent the Commission when there were issues of
7 conflicts between the Commission and the Division. So I
8 thinks there's some precedent for requesting this kind
9 of an opinion. As Deputy Director Greene pointed out,
10 we want to finesse it in a way that fits within the
11 duties of the Commission as articulated in the code so
12 that to the extent possible we have presented the
13 Commission's request in a way that fits within the
14 Commission's responsibilities and obligations as they're
15 spelled out in the statute. Now, to the extent that we
16 have to push that envelope, that's basically what we're
17 trying to do.

18 So it's not clear from the Commission's duties
19 that it has the authority to request an opinion. The
20 Commission's duties and responsibilities are pretty
21 clearly spelled out in the statute. So this Commission
22 operates a little differently than some other
23 commissions, like the Coastal Commission that has
24 clearly statutory independence and its own independent
25 staff and has its own (unintelligible). So I understand

1 the angst and the anxiety about getting a realistic
2 opinion. And we're just trying to do that in a way that
3 keeps you guys, the Commissioners, covered in terms of
4 their responsibilities.

5 So I know that sounds like a lot of bureaucratic
6 gobbledygook, but that's what --

7 (Multiple speakers.)

8 CHAIR WILLARD: Well, what am I hearing is that
9 you need more time to consider this, or is it --

10 ATTORNEY LA FRANCHI: Well, as I said, it's a
11 new question. Well, we requested independent counsel
12 from the attorney general's office before that letter
13 went all the way through the administrative process, so
14 the governor's office and the folks in the legislature,
15 the appointed legislative members, understood what was
16 being requested. So we weren't getting sideways with
17 anybody in terms of the Commission's role. So we've
18 been trying to be cautious with that. If you prefer
19 that we not be cautious, we could take another approach
20 to it.

21 (Multiple speakers.)

22 CHAIR WILLARD: Is there --

23 ATTORNEY LA FRANCHI: No, we're saying we're
24 trying to figure out how to do it in a way that it
25 doesn't come back to haunt you.

1 (Multiple speakers.)

2 CHAIR WILLARD: Yeah, the question at hand is
3 one hand of the government going in another part of the
4 government's pocket and illegally taking money? Is the
5 money fungible? That's the issue, correct?

6 ATTORNEY LA FRANCHI: That's the issue that's
7 being debated. The legislature -- there have been
8 opinions allegedly rendered by the Legislative Analyst's
9 Office. The legislative counsel, apparently, has
10 rendered some opinions. We're thinking that may be one
11 way to do this is to request those opinions.

12 CHAIR WILLARD: But as we also saw, the minutes
13 from the Budget Committee hearings, staff even said that
14 they didn't think it was fungible. So I mean there is
15 some debate here.

16 ATTORNEY LA FRANCHI: And, quite frankly, the
17 administration believes it's fungible. The governor
18 signed the legislation that took the money. Yeah. So
19 to the extent you want to get sideways with all of
20 that --

21 (Multiple speakers.)

22 COMMISSIONER KERR: This gentleman works for the
23 governor. I work for the people of California. And I
24 believe that we had one of the very few action items
25 that was voted on at the meeting, which we all took time

1 to attend in Sacramento, was this submittal to the
2 attorney general for the opinion as to the legal
3 standing of this action taken by the state legislature.
4 This is a perfectly appropriate request. And I mean I
5 think I understand completely your situation, but I'm
6 not in your situation. So I thought we voted on this,
7 but if the Commission would like to take another vote --
8 maybe I misjudged the action.

9 CHAIR WILLARD: I'm fine with what we agreed to
10 before. I think we should move forward with it unless
11 there's some reason --

12 DEPUTY DIR. GREENE: I'm happy to move forward
13 on it. I simply think that I owed it to this Commission
14 to make sure that you were aware of how -- we were going
15 through the process; want it just to be aware, and then
16 come back to you. It hasn't changed anything. We're
17 looking now at the 2011 cycle or whether or not
18 litigation will occur as well. So it's just looking at
19 all of those variety of options.

20 (Multiple speakers.)

21 CHAIR WILLARD: Fellow Commissioners, any --
22 Commissioner Van Velsor.

23 COMMISSIONER VAN VELSOR: I'm curious how the
24 OHV Trust Fund differs from the other funds that are
25 also losing money. Is there a legislative statutory

1 difference? I mean why would our trust fund be any
2 different? See what I mean?

3 CHAIR WILLARD: Well, our trust fund is user
4 supported. Other trust funds throughout the state, they
5 get their money from the General Fund, and we don't. We
6 get our funds from a combination of user fees at the
7 SVRAs, green sticker, and our share of the gasoline tax.

8 COMMISSIONER VAN VELSOR: So is that true that
9 none of the other funds that are also having money taken
10 from them are different than ours or --

11 ATTORNEY LA FRANCHI: Well, I don't believe any
12 of us have done the research on the other funds. I used
13 to work for Caltrans. I've been following that a little
14 bit. And Caltrans in its programs and its funds are
15 being subjected to the same scrutiny and shifts. I
16 haven't looked at Boating and Waterways or the
17 Aeronautics Fund, which are two funds that are also
18 funded with transfers from the Motor Vehicle Fuel
19 Account just as the OHMVR Program, and those funds, I
20 believe, have been hit also. But I can't say. So this
21 program is not the only program -- every program that's
22 got these special funds is being looked at. So this
23 \$11 billion includes a lot of programs that spent
24 allegedly special funds and those distinctions. So it's
25 not as if you're standing alone. Yeah, there are

1 some -- the registration fees and the gate fees, the
2 entrance fees are a little different than the motor
3 vehicle fuel taxes. So there's some complexity there.

4 But the legislature has an extremely wide -- the
5 legislature can pretty much do what it wants unless it's
6 told by the Constitution not to. So there's some
7 extremely broad latitude on the legislature's side. And
8 then with all of these other complexities, we were just
9 being cautious in terms of how to write the letter,
10 beginning to put some language together, checking with
11 other people. This is certainly way above our pay
12 grade.

13 CHIEF JENKINS: I think, just to add, what makes
14 our program so different, if you will, from a lot of the
15 other programs, it's hard to trace it back to any legal
16 wording or legal framework, but there's very few
17 programs in state government that are so clearly a
18 social contract between a group of interests of parties
19 that all have a common cause, in this case, both the
20 environmental community and the OHV community, back at
21 the very beginnings of the program. It is so crystal
22 clear when it came together and the Chappie Z'Berg
23 created the program that, if you will, the social
24 contract was created, that this money had a very
25 specific and definitive use. People were willing to pay

1 the money. The green sticker was instituted. There was
2 no ambiguity in this program that the money was
3 collected for a specific cause. It's been used for that
4 cause other than the time that it's been borrowed or
5 redirected. And I think that's what has everybody so
6 concerned is when there's such a crystal-clear
7 connection between who's being charged fees, what those
8 fees were directed to do and then what they end up being
9 redirected to do in the end, it's just such a clear
10 picture here. A lot of the other programs may have
11 similar flavors to them, but I don't know of any other
12 program that is quite as crystal clear as this one.

13 DEPUTY DIR. GREENE: And to that end as well, I
14 think that that's exactly where, when you look at it
15 from a legal challenge and whether or not some sort of
16 lawsuit from the OHV community would occur, would be
17 based on the fact that those are fuel taxes paid in lieu
18 of those refunds that the community would otherwise get.
19 And so that is, I think, one of the core questions.

20 We have seen a lot of suits take place in the
21 budget cycle. Counties and cities in particular are
22 suing. So I think that's certainly an option should
23 communities of interest decide that that's the way they
24 want to go, I think. But you're just looking at all of
25 it. Boating and Waterways I do not believe was hit this

1 year, at least in the 2010 cycle. They certainly should
2 be aware that they had conversations with them about how
3 they need to be aware because they're next.

4 CHAIR WILLARD: So I appreciate your concern and
5 wanting to look out for us and make sure that we're
6 fully informed. But I think Commissioner Kerr is
7 correct that we did make a motion, and the Commission
8 decided to write the letter to the AG seeking their
9 determination of the fungibility issue.

10 So unless my colleagues have some other
11 suggestions or comments, I think that the motion stands,
12 and we would just thank you for your concern.

13 And you put it this, but please move forward
14 with the letter.

15 DEPUTY DIR. GREENE: Absolutely.

16 CHAIR WILLARD: Thank you.

17 COMMISSIONER SLAVIK: Gary.

18 CHAIR WILLARD: Sure, Commissioner Slavik.

19 COMMISSIONER SLAVIK: Looking through this list
20 here, I don't see one fund name that has "trust" in it.
21 I mean I understand that there's people that can have
22 money diverted. We're the only one that says "trust
23 fund." I mean there's --

24 DEPUTY DIR. GREENE: I'll look in your packet,
25 but under one of the bills that was passed, what -- I

1 think it may have been under 108, there's also
2 additional materials that provide that and go all the
3 way through. And it's surprising to me. The
4 difference, though, I think to Commissioner Van Velsor's
5 question, was those trust funds are not directly paid
6 for by the community. So that's what we were trying to
7 glean out of how many of those trust funds are paid
8 directly, how many are paid in lieu of something else or
9 refund, and what are the similarities, what are the
10 differences, and then how do you go from there.

11 COMMISSIONER SLAVIK: Are you saying there's
12 another list?

13 DEPUTY DIR. GREENE: I'll double-check at the
14 break.

15 CHAIR WILLARD: Is that it on the --

16 DEPUTY DIR. GREENE: That's correct.

17 CHAIR WILLARD: Okay. Commissioners, any
18 questions, comments on this before we move on? No?
19 Okay.

20 DEPUTY DIR. GREENE: I'm sorry, one more point.
21 We added this section as well, the letter that was
22 written by Mark Leno. And so I think that that's
23 something that I hope -- Senator Leno -- that all of you
24 would take a look at. Again, everybody in this
25 community, we need -- everybody has a voice. We need

1 the importance of letting the members of the legislature
2 and the governor's office know. Senator Leno wrote this
3 letter and said if, in fact, some of these items do not
4 pass, the taxes, whatever it may be, if there are any
5 other alternatives that might be considered -- in that
6 response back from the LOA's Office -- and this will be
7 on the back of your staff report at the very end -- one
8 of the things that was said was that an option would be
9 to get rid of the OHV Division. It might not say that
10 outright, but it said to take \$88 million from the OHV
11 Trust Fund or find us \$85 million a year. So you can
12 start to connect the dots. Again, everybody has a
13 voice. Everybody needs to have their voices heard.

14 CHAIR WILLARD: Commissioner Van Velsor.

15 COMMISSIONER VAN VELSOR: In that case, I mean
16 according to Senator Leno's response from the LAO, if
17 the governor's recommended tax extension is not granted,
18 then we have the potential of losing \$88 million, the
19 program, as well as significant other programs state
20 wide. So I would entertain the idea that the Commission
21 should support the governor's request for a tax
22 extension so that we're not faced with a loss of the
23 program and loss of other important state programs.

24 DEPUTY DIR. GREENE: Where I think it gets a
25 little bit more complicated, if I may, is that if, in

1 fact, at any which time the program were to go into the
2 red, then that waves the flag in order to get the money
3 that has been borrowed to be paid back. So that's where
4 what's being said here, and I know it's complicated,
5 which is the fund could zero out, and at the moment it
6 zeros out, the money's got to come back into the fund.
7 So that's what just complicates it even more. So it's
8 just we put that in there so that people would
9 understand that was one of the options that LAO's Office
10 said could happen. There are a variety of other things
11 as well.

12 COMMISSIONER VAN VELSOR: I guess I'd like to
13 make a motion, then. The Commission submit a letter to
14 the legislature in support of the governor's request for
15 the tax extension.

16 CHAIR WILLARD: Second?

17 COMMISSIONER KERR: Well, I'll second it just
18 simply to have the discussion. So I'll second the
19 motion.

20 CHAIR WILLARD: Discussion?

21 COMMISSIONER SLAVIK: Yeah, I'm not sure I
22 understand the implications of that.

23 Mr. Kipp, could you help us?

24 (Unintelligible audience participation.)

25 CHAIR WILLARD: I'm uncomfortable with such a

1 letter. I think it's overreaching, and it sort of ties
2 our program to the affairs of the state's budget, when I
3 think what we're trying to argue is that we're
4 self-sufficient, and we want that to stand on its own
5 merits, I think. So that's why I think I would, in
6 principle, be against it.

7 COMMISSIONER KERR: I'm sympathetic to your
8 motion; however -- and if it was up to me, if I get the
9 chance, I'll vote to rescind the taxes. However, I
10 think what we're trying to do here is to do what we can
11 to discourage further raids, further consideration of
12 doing this kind of thing. They've already started
13 taking the money. So maybe if the attorney general had
14 an opinion that that was an illegal action, we could
15 have some retroactive refunds. Really, I'd like to keep
16 the Commission on point about dealing with this
17 particular issue, even though I am sympathetic to your
18 point of view. I don't know if it's really -- it just
19 kind of dilutes our focus in trying to fight these
20 attacks on the Commission's budget.

21 COMMISSIONER VAN VELSOR: And I appreciate that.
22 But I do feel that in order for the tax extension to
23 happen, there's going to have to be a response from
24 groups that aren't traditionally associated with
25 increasing taxes -- not increasing taxes, extending

1 existing taxes. And I think this Commission's support
2 of those could be an influence that would carry not only
3 our support but possibly the support of some of the OHV
4 community to provide for a more stable budget within
5 state government.

6 CHAIR WILLARD: Again, personally, I'm okay with
7 the extension of the taxes. I mean if it was on the
8 ballot, and I wish it was, I'd vote in favor of it.
9 But, again, I just think that that's overreaching, and I
10 think it just sort of dilutes our primary argument that
11 our funds are our funds. And so I think we ought to
12 just stop there. But I'm certainly willing to defer to
13 my colleagues.

14 So does anyone else have anything else to say on
15 this? No? Okay.

16 Do you want to have a vote?

17 So all those in favor of writing a letter in
18 support of tax extensions, please vote "aye."

19 (Commissioner Van Velsor voted.)

20 CHAIR WILLARD: Those opposed?

21 (Commissioners simultaneously voted.)

22 CHAIR WILLARD: So I'll have the record show
23 that --

24 (Applause.)

25 CHAIR WILLARD: -- (unintelligible).

1 (Multiple speakers.)

2 **AGENDA ITEM VI (B) - ELECTION OF OFFICERS**

3 CHAIR WILLARD: But, Commissioner Kerr, I'm
4 sympathetic to your point of view there.

5 Okay. So I think we're done with that business.

6 Moving on, we are supposed to have an election
7 of officers. I think what I would propose is that we
8 table that until the very beginning of the next meeting,
9 and then the new chair can then take over that meeting.

10 Is that okay with everyone else?

11 Okay. So we'll just do that.

12 So we'll now take a break for lunch. Back here
13 at 1:00 --

14 DEPUTY DIR. GREENE: Yeah, Commissioner, if I
15 may, just for a moment. You have in front of you a map
16 that will give you some lunch options for today.

17 Also important for those of you going on the
18 field trip tomorrow, we need before the lunch hour ends,
19 if you could fill out your lunch order for tomorrow,
20 that would be great.

21 And I think probably try and be back here at
22 1:15, 1:30?

23 CHAIR WILLARD: 1:15?

24 DEPUTY DIR. GREENE: Yeah, back at 1:15.
25 They're close.

1 CHAIR WILLARD: Yeah, 1:15, please. Thank you.
2 Meeting adjourned.

3 (Lunch recess.)

4 CHAIR WILLARD: If you'd please take your seats.
5 I'd like to get the meeting going.

6 Good afternoon and welcome to the State of
7 California's Off-Highway Motor Vehicle Recreation
8 Commission. The first part of our meeting was this
9 morning. And this afternoon we're going to focus on the
10 remainder of the day on the Clear Creek Management Area.

11 Before we get started, I would like to recognize
12 Sheriff Thompson. And if you could please come up and
13 make -- would you like to give us a few words, please
14 do.

15 (Applause.)

16 SHERIFF DARREN THOMPSON: Well, this will be
17 difficult to address to people on all sides of me, but
18 I've done that before -- but usually they have weapons.

19 I thank you all for coming. I -- as a sheriff
20 of the county, I'm delighted to welcome those who from
21 outside the county have traveled today to come to
22 discuss this important issue. I just want to take a
23 moment and talk a little bit about myself so that we can
24 be more acquainted.

25 I've been a resident of this county now for

1 seven years, and eight years ago was looking for a place
2 to raise my family. We'd been living in another
3 community that we no longer felt was a great place to
4 raise children. And we were making weekly trips over
5 here to Hollister to ride our dirt bikes at Hollister
6 Hills, as one of the sports that we enjoy, our family.
7 I have three children. They all ride. And it's one of
8 our passions. So we were making weekly trips to
9 Hollister Hills to ride our dirt bikes. And when my
10 wife and I started having these discussions about where
11 we'd like to live, it was pretty easy for us to make
12 this decision to come to the beautiful county of
13 San Benito and live in the fine city of Hollister and
14 have such close access to the great riding areas.

15 We'd lived here just about six years; we had a
16 number of people approach me and ask me if I'd be
17 willing to run for sheriff. And you could see how that
18 turned out. For those of you who might have some color
19 blindness, this is a tan-and-green uniform. I had been
20 working at the Watsonville Police Department for the
21 last 23 years and preparing myself for the duties that
22 would follow as the sheriff of this county.

23 One of the things that I wanted to mention to
24 this group is during 2010 I spent a great number of
25 hours campaigning here in the county for this position.

1 And many of the voters in the community were very
2 specific about their interests in seeing public lands
3 used by the public for all activities, particularly OHV.
4 And so the constituents that have placed me as the
5 sheriff of this county are holding me accountable to
6 that. And so I'll be watching as this process unfolds.

7 As a peacemaker for the last 24 years, I've
8 enjoyed seeing people from all different perspectives
9 come together for the common good of others, and I'm
10 hoping that occurs here today.

11 I'll be leaving in just a few minutes. I have
12 some business at Capitol Hill. So I won't be here for
13 the discussions that follow today. But, again, welcome
14 to the county for those of you that are visitors, and,
15 also, good luck as we sort through this important issue.

16 Thank you very much.

17 (Applause.)

18 CHAIR WILLARD: Thank you, Sheriff Thompson.

19 I believe that the chair of the board of
20 supervisors is here who would like to also address us.

21 Please. Thank you.

22 (Applause.)

23 CHAIR WILLARD: I'm sorry. Chairwoman Margie
24 Barrios.

25 CHAIR BARRIOS: That's it. Thank you so much.

1 I really want to say thank you for having the
2 interest in San Benito County and understanding that
3 there is a lot of interest in the Clear Creek area and
4 having your meeting here. I know that you plan your
5 meetings way ahead of time, but it really is appreciated
6 by us. It has affected us tremendously as a county,
7 economically and otherwise, tourism. So the fact that
8 you're here sends out a really good message to the
9 community.

10 I also want to say that I am a CCMA enthusiast
11 and have been since the 1970s. I have a passion and a
12 love for Clear Creek, and I want to see it open again.
13 So thank you. I appreciate your interest and the fact
14 that you're here, and the people that you've brought to
15 this county.

16 Thanks again.

17 (Applause.)

18 CHAIR WILLARD: Okay. Before we roll up our
19 sleeves and dig in, I'd just like to say a few words.
20 First of all, on behalf of my colleagues on the
21 Commission and staff, I want to thank everyone for
22 coming out. This is a great turnout. And we're really
23 looking forward to a lively discussion. There's a lot
24 of -- I'm sure a lot of passion on both sides of the
25 issue. And I would just ask that we try to be

1 respectful of one another and try to keep it at a higher
2 level. And I think if we do that, we'll be able to get
3 through the afternoon in good order.

4 I also want to try something a little bit
5 different. I really want to try to facilitate the
6 public's interaction with the experts that we will have
7 here today. And so we will have a public comment period
8 where you can stand up and give your comment, and that's
9 fine. We'll do that as we normally do, two minutes for
10 individuals and four minutes if you represent an
11 organization. And there are cards in the back that you
12 would need to fill out --

13 No?

14 No, that's right. I'm sorry. No blue. And
15 that's for non-agenda items. Thank you. The green
16 only. And then if you can put them here to the desk,
17 then we can get your comments heard.

18 However, trying something different, there are
19 yellow cards that are for questions. Now, I'm not sure
20 how this is going to go. We're going to give it a try.
21 And what I wanted -- because typically what happens is
22 we hear from -- we get comments from the public, but
23 it's really comments. And if there's -- a lot of times
24 we don't have a question. But it's too awkward to try
25 to respond to a question at that point in time. So what

1 we're going to try to do is gather questions, specific
2 questions that you may have concerning either what
3 you're hearing here today or some of the documents that
4 have been publicized. Just put out a shortened
5 question, don't make it too lengthy and, again, submit
6 it here. And we'll try to have a Q and A period with
7 the folks from the various organizations that are here
8 today, the scientists.

9 And I want to thank BLM, EPA, and IERF for being
10 here today. We're looking forward to listening to their
11 back-and-forth discussion. And I want to thank them in
12 advance for spending the afternoon here with us.

13 So I think with that, I will turn it over to
14 Deputy Director Greene.

15 **AGENDA ITEM(C) - CLEAR CREEK MANAGEMENT AREA**

16 DEPUTY DIR. GREENE: Thank you, Commissioners.

17 Members of the public, welcome.

18 As the Chair just said, on March 14th, the
19 Commission had a meeting. At that time we were actually
20 scheduled to go down to southern California. The
21 Commission directed us to look further at this issue. I
22 know that there had been -- the Clear Creek issue had
23 been on the agenda last year twice. We had been making
24 efforts to try and have the EPA join us at one of the
25 Commission meetings at that time, and for various

1 reasons that didn't work out with the Commission's
2 schedule. So when the Commission on March 14th asked us
3 to move forward looking here and working with a
4 sub-committee, we are here in Hollister. So the timing
5 worked out well.

6 Subsequent to the Commission meeting, the
7 independent report that the Division had commissioned
8 came out. And so I think the time now is the
9 opportunity to have some of that good thoughtful
10 discussion.

11 So as Gary said, we'll start today with Rick
12 Cooper and the BLM being able to give an overview.
13 Because while some of you may know this area intimately,
14 we also have members of the Commission who are new and
15 who may know it and other Commissioners who don't. So
16 we've asked Mr. Cooper if he'd give an overview of the
17 Clear Creek area and also an update of where we are and
18 BLM is in the planning process. And then we'll have an
19 opportunity to hear from EPA. Some of you may have
20 already heard EPA, but the Commission has not. So it's
21 really an opportunity for the Commissioners today to be
22 able to hear and have a dialogue as well as those from
23 IERF.

24 So, Mr. Cooper, thank you for being here today.
25 We appreciate it.

1 Can somebody in the back, if we could --

2 Rick, do you want the lights off now or do you
3 want to wait --

4 RICK COOPER: Yeah, you might as well take them
5 down right now.

6 DEPUTY DIR. GREENE: Okay.

7 **AGENDA ITEM(C) (1) - OVERVIEW OF AREA BY BUREAU OF LAND**

8 **MANAGEMENT**

9 RICK COOPER: Well, thank you, Commission.
10 Thank you very much for having me here today. Thank
11 you, Daphne.

12 I am Rick Cooper. I'm the Hollister Field
13 Office Manager here for the Bureau of Land Management.
14 And as Daphne said, my responsibility today is to --
15 just a quick overview of the area and hopefully help the
16 Commission maybe see some places they may go tomorrow on
17 a tour.

18 Next slide.

19 The planning area for Clear Creek is 75,000
20 acres in San Benito County and in Fresno County.
21 There's a 31,000-acre outcrop of naturally occurring
22 asbestos, which is depicted in the yellow there. It's
23 one of the largest asbestos deposits in the United
24 States. And BLM had designated this area as an area of
25 critical environmental concern back in 1994 due to

1 asbestos hazard and a unique assemblage of plant species
2 in the area.

3 The Atlas Mine, which is an EPA Superfund Site,
4 is located on the southern end of the project area,
5 which is depicted on that map as well. It's down in
6 here.

7 Next slide.

8 So just a quick overview. From space and
9 dropping into the Clear Creek area, you have San Jose to
10 the north, you've got Fresno here on the east, kind of a
11 little triangulation there with Clear Creek.

12 Next slide.

13 So as you zoom in, the blue highlighting depicts
14 the serpentine mass area which has been the focus of the
15 whole plan for the Clear Creek Management Area. The
16 area is an ancient serpentine formation. It's heavily
17 weathered. It's one -- it's a very highly mineralized
18 district, has a lot of interest from a mineralogical
19 perspective. And there's been over 300 mining claims
20 been recorded in the area. The area is crossed by
21 hundreds of miles of roads that were built to extract
22 minerals and timber in the past.

23 Next slide.

24 This area -- now, I've turned the highlighting
25 off. You can still sort of -- you can depict the area

1 that is the mineralized portion of this by looking sort
2 of at the center areas of barrens, of the historic
3 mining that has taken place. You can still depict
4 what's going on there. The range of elevations here go
5 from 2,200 feet to 5,200 feet on this site, 5,200 feet
6 being the highest point in San Benito County right there
7 at San Benito Mountain. Almost 9,000 acres of Clear
8 Creek Management Area is barren hills due to the highly
9 mineralized nature of the soils, which are nutrient poor
10 and limit plant growth. So the best way in looking at
11 it is those bare areas depicted there are what -- are
12 the barrens. As you come to the southeast of the unit,
13 you're actually getting more into -- mining disturbances
14 is what you're seeing right in that location.

15 The natural barrens have -- it's very steep
16 terrain. Density of roads and trails across the
17 landscape make soil erosion a concern. Activities that
18 disturb the soil and create dust have a potential to
19 release asbestos into the air.

20 From the 1850s to the 1970s the area was mined
21 for cinnabar, which was then processed into mercury --
22 to extract mercury. In the early 1960s, the asbestos
23 mines opened in the area, and those are located down on
24 the -- as I said, kind of on the southeast portion of
25 it. There are now two mining sites on here that are

1 Superfund Sites within the vicinity of the Clear Creek
2 Management Area. One is the old Idria mercury mine on
3 the very north and east portion of the project area or
4 the management area, and then one is the Superfund
5 site -- the Atlas Superfund Site, which is located right
6 there where the highlighter is.

7 So next slide.

8 This zooms in on the mine -- the Atlas Superfund
9 Site. It also allows you kind of to see numerous trails
10 and routes that are on the landscape around the mining
11 area. Some created for mining operations solely; some
12 were created for recreational opportunity as well.

13 Next slide.

14 This map -- I put this one up here to show you
15 that there's -- to give you a little bit of an idea of
16 the routes that are out there. There's 242 miles of
17 route existing as depicted on this map. The 2006 Route
18 Designation Plan that was done on this area allowed up
19 to 270 miles of route. This actually shows, you know,
20 what we had approved at a given point in time, which was
21 242. These trails provide opportunities for
22 multiple-use activities which include hiking, hunting,
23 camping, rock collecting, botanical research, and OHV
24 use. The trails can be challenging, and the area's
25 nationally recognized as a destination point for

1 motorcycle riders.

2 Weekend visitors included families and children.
3 And prior to the 2008 closure, Clear Creek Management
4 Area averaged approximately 3,500 visitor-use days
5 annually.

6 Next slide.

7 So now I'm going to take you on just a quick
8 trip up the canyon and point out a few things,
9 particularly the barrens. This is the confluence of
10 San Benito River and Clear Creek, and this is the
11 entrance to Clear Creek on the Clear Creek Road located
12 right here. We're going to take a trip up the canyon.
13 One thing to point out is this is where we just recently
14 built a new Decon facility -- is where that marker is
15 now. And then this is Oak Flat Campground, which will
16 be kind of a meeting point for you tomorrow. This --
17 none of this is in the serpentine ACEC area.

18 This is just a little further up the canyon.
19 We're still just right on the edge of the ACEC but we're
20 not in it. This corner piece down here is the starting
21 of the serpentine formation. You have -- the Jade Mill
22 Campsite area is approximately right here. And note the
23 trails exiting out of the canyon. These were the riding
24 trails that recreationists used coming out of the canyon
25 area.

1 Next slide.

2 Now you're into the ACEC going up Clear Creek
3 Canyon, and you're picking up the barren areas which
4 have the naturally occurring asbestos on it. You see
5 the trails going out of the canyon still up in here.
6 You're starting to pick up a larger barren in the area
7 to the right of the slide. And --

8 Next slide.

9 Again, just a larger, a better view of kind of
10 what the barrens look like out there just to give you
11 kind of an idea of what that slide -- and those provided
12 riding opportunities for the OHV use.

13 Next slide.

14 The next slide I'm taking you right up on top.
15 You're on the -- kind of the ridge line that breaks
16 between the San Joaquin River drainage, which if you
17 fall off to the right, you're going to the San Joaquin
18 Valley with any water, off to the left you're going into
19 Clear Creek, San Benito, Pajaro watershed. One thing
20 that's interesting on this slide is this is the Aurora
21 Mine complex. This is another issue for us is abandoned
22 mines. This a mine that we remediated a number of years
23 ago. BLM spent probably \$4 million in mine remediation
24 in the Clear Creek -- or in this ACEC area. The other
25 thing is -- I don't have another slide of it, but as you

1 go to the bottom of the slide and then off the slide,
2 you're going into the research natural area, which has a
3 unique assemblage of plants, which include one of the
4 few places that you'll see Cedar, Gray Pine, Coulter
5 Pine, Jeffrey Pine all together at one location.

6 Next slide. Next slide.

7 So just quickly to go through the history. So,
8 Commission, what I'm trying to get across on this is
9 that this isn't a new issue. It's been an issue with
10 the Bureau; it's been an issue with the user groups and
11 with agencies for a considerable period of time. The
12 first -- the very first management plan that we wrote in
13 this area, the Fresno/San Benito Management Framework
14 Plan, it was identified at that time that there was a
15 safety issue due to naturally occurring asbestos. And
16 at that time the -- it was suggested that studies take
17 place to determine just what the agency was dealing
18 with.

19 In 1979, there was a UC Berkeley study that was
20 done out there. They determined that there were high
21 concentrations of asbestos of a nature that were
22 normally found in work environments and not normally
23 expected in an open-space recreation area. In 1981, BLM
24 weighed that with a -- while they did a management plan,
25 they decided to let the recreationists make their own

1 determination as to whether or not they would go out
2 there and recreate in that environment.

3 In 1990 -- or, I'm sorry, in 1984, the Atlas
4 Mine was placed on the National Priorities List, became
5 a Superfund Site. And what that did was it just -- it
6 brought some additional study and -- to the -- to that
7 area. In 1984, Hollister was also completing a Resource
8 Management Plan, which is our large land use plan for
9 our whole area of about 290,000 acres, of which Clear
10 Creek was a part of that. And at that point in time,
11 OHV use would continue with the serpentine ACEC despite
12 the recognized hazard. Asbestos hazard awareness
13 programs were emphasized. And then it was suggested
14 that we reduce camping and staging in the serpentine
15 zone as we acquired other parcels and created other
16 camping opportunities outside.

17 In 1995 there was a fire in Clear Creek -- or,
18 I'm sorry, in 1985 -- I keep jumping ahead -- 1985 there
19 was a fire in Clear Creek. Three hundred to five
20 hundred firefighters were put into the area to fight the
21 fire. It was determined that they had been exposed to
22 asbestos levels above the personal exposure level.
23 State of California had three industrial hygienists go
24 into the area, do a study. They evaluated it. And the
25 results that they came up with was that the air

1 monitoring supports that recreational and industrial
2 activities in the area will result in over-exposure to
3 OSHA limits for asbestos fibers -- fibers. The data
4 reaffirms that the recreational use of the area subjects
5 citizens and employees to needless risk of lung cancer
6 and asbestosis. Firefighters who were required to
7 access the area and work were exposed to asbestos fibers
8 in excess of Cal-OSHA permissible exposure levels. And
9 at this point in time, Calfire will still not put people
10 on the ground to fight fire in that area.

11 Next slide. And hit it again and then again.

12 In 1991, EPA signed a Record of Decision for the
13 Atlas Mine. In doing that, both the EPA and DTSC
14 expressed concern regarding ongoing OHV recreation in
15 the serpentine ACEC. And CCMA, the project area, was
16 listed as one of four geographic areas in the Superfund
17 Site. In 1992, to some degree in response to that, the
18 BLM conducted its own Human Health Risk Assessment,
19 hired a contractor, followed protocols, laid out
20 guidance. And that study provided us with some very
21 useful information at that point in time. It suggested
22 limitations in days of use might be a means to reduce
23 the risk. It also indicated that season or month cannot
24 be used as a predictor of asbestos concentrations in the
25 air. And there was a discrepancy between that

1 information and what was found on the UC Berkeley; it
2 was somewhat lower in terms of concentrations of
3 asbestos on this study than what was -- had been
4 determined in 1979 by the UC Berkeley study. As part of
5 that study, then BLM, much as we did on this particular
6 phase we're in now as far as doing our RMP, we did a
7 1995 Clear Creek Management Area Proposed RMP Amendment
8 in there, and that looked at a number of significant
9 administrative and engineering controls, looked at
10 putting in wash racks, dust suppression on roads,
11 closing areas to types of use, and closing all OHV use.
12 So those were all alternatives that were considered at
13 that time as well. BLM, with the 1999, ROD, Record of
14 Decision, signing for that plan maintained continued OHV
15 use in the area.

16 Then in 2004 -- it's not depicted up in there,
17 but in 2004 we started the Hollister RMP again, which
18 was going to replace the 1984 Hollister RMP. So we
19 started that process. At that time the EPA began -- in
20 2004 they initiated their Asbestos Exposure Human Health
21 Risk Assessment for Clear Creek. At that time the state
22 director of BLM and the EPA Region 9 director agreed to
23 remove Clear Creek from the Hollister RMP, take it out,
24 wait until the Asbestos Exposure Risk Assessment by the
25 EPA was done, and that was determined. So we

1 followed -- completed our other RMP. In the meantime,
2 we also completed a 2006 Route Designation Plan as was
3 required by policy where we did have OHV use occurring
4 in Clear Creek. Then in 2008, EPA completed the Risk
5 Assessment; it was released. And then 2011, the IERF
6 report was released.

7 So that gives you an idea of the -- you know,
8 the information that has been accumulating over the
9 years and has been refined. We keep getting a little
10 bit better and better information.

11 So next slide.

12 The Risk Assessment, 2004, the data was -- the
13 initial data was gathered by EPA. And based on that
14 information, the Bureau of Land Management looked at it
15 and determined to close to the serpentine ACEC during
16 the dry season, which was June 1st to October 15th.
17 That decision was appealed. IBLA affirmed BLM's
18 decision to close it based on the information we have
19 from EPA, and effectively concurred with the use of the
20 EPA as our science advisor.

21 In May of 2008, EPA completed the full Health
22 Risk Assessment and released it to the public. Based
23 upon that information, again, indicating that there was
24 high-exposure levels occurring even in the time period
25 that we considered to be a moist environment or wet

1 season, there was still exposure levels above the
2 thresholds, BLM made the choice -- or the decision to
3 close the area due to health concerns and until such
4 time as we complete the current plan that we're working
5 under for the RMP/EIS.

6 So next -- hit the button again.

7 May 2008, we really got the plans started at
8 that point. We had done some basic scoping before, but
9 this really kicked off the plan. We're coming up on
10 three years in May.

11 Next slide.

12 So what the plan is going to do, the composed
13 RMP/EIS, it's going to -- what the RMP's going to do for
14 us, it's going to replace the 1984 Hollister RMP
15 decision for Clear Creek as well as all the 1995, 1999
16 Record of Decision Amendment and the 2006 Route
17 Designation. The RMP, establishes the goals, objectives
18 and management actions that address current issues and
19 knowledge and conditions for the Clear Creek Management
20 Area.

21 Next slide.

22 So the -- the goals are to -- for this PRMP,
23 minimize asbestos exposure to the public; reduce
24 asbestos emissions; designate non-motorized,
25 non-mechanized, motorized and mechanized recreation

1 opportunities for the entire plan area; protect
2 sensitive, natural and cultural resources; provide
3 guidance for mineral and energy development; and make
4 other land-use authorizations and tenure adjustments.
5 So the other land-use authorizations would be like
6 rights-of-ways, grazing-use authorization. Land tenure
7 would be whether we sell land or buy land in certain
8 areas.

9 Next slide.

10 So the next steps for us right now is that we
11 have completed the public comment phase. We are in the
12 process of getting that part of the big job done. We
13 have taken input from our state office, and we're
14 finalizing the document. At this point, where we're at,
15 we were on a schedule to attempt to get a Federal
16 Register Notice of Availability for the proposed
17 RMP/Final EIS in April 2011, allow for a public protest
18 period of 30 days, Governor's Consistency Review of
19 60 days, and then a Record of Decision for the Clear
20 Creek Management Area on August 31st, 2011.

21 So we just received the IERF report, so -- you
22 know, at a point in time a week ago or so. So we're in
23 a situation now of looking at that information.
24 Understand if -- I just wanted to make a point with the
25 slide is if this April '11 date bumps to May, then you'd

1 be looking at possibly a September decision -- Record of
2 Decision. If it bumps to June, then you'd be looking at
3 October. So that's just kind of the flow of things.
4 And that's all I was hoping to make with that.

5 Next slide.

6 That ends my presentation.

7 Are there questions?

8 CHAIR WILLARD: Commissioners?

9 COMMISSIONER SLAVIK: Did I misunderstand you?
10 Did you say that visitor use days, 3,500?

11 RICK COOPER: Thirty-five thousand.

12 COMMISSIONER SLAVIK: Thirty-five --

13 RICK COOPER: If I said "3,500" -- I'm sorry if
14 I did. But it's 35,000 annually.

15 COMMISSIONER SLAVIK: Thank you.

16 And of those 35,000 visitor use days per year,
17 has there ever been an incident in -- that you're aware
18 of any health -- actual health -- resulting health
19 situations that arose from people operating or
20 recreating in this area? Has anybody --

21 RICK COOPER: For asbestos? Yeah, I mean
22 obviously there's been accidents out there and injuries
23 and stuff. That is related to asbestos-related issues?
24 No.

25 (Applause.)

1 COMMISSIONER SLAVIK: I guess that answered my
2 question.

3 DEPUTY DIR. GREENE: Quick clarification. I
4 wasn't exactly sure I was clear. On the '91 ROD, was it
5 because of the mining activity on those roads and trails
6 that said it was the EPA's -- maybe it's a question for
7 Jere later. I was just trying to determine, I didn't
8 think it was the result of OHV use on those roads and
9 trails, but it was the mining activity that said --

10 RICK COOPER: Well, the roads and trails for the
11 most part were created by the mine operations. And my
12 understanding of it is, and probably Jere is the best
13 one to talk about that, that connection, that was sort
14 of the nexus connection that these roads were a result
15 of a Superfund Site operation in part to support that
16 mine operation. As a result, then, there were concerns
17 about ongoing health issues related to the use of those
18 roads for other purposes.

19 DEPUTY DIR. GREENE: Okay. Great. Thank you.

20 CHAIR WILLARD: Mr. Franklin.

21 COMMISSIONER FRANKLIN: Yeah, just a quick
22 question here.

23 Looking at one of your slides, one of the last
24 ones, you had up there that you anticipated a Record of
25 Decision August 31 of 2011.

1 RICK COOPER: That's correct.

2 COMMISSIONER FRANKLIN: Okay. I'm just looking
3 at a press release and it says, "We welcome dialogue
4 with the OHV Division. We've requested EPA review the
5 new study. And we will wait until the scientists have
6 had time to consider the new information before a final
7 land-use decision is made."

8 RICK COOPER: That's correct.

9 COMMISSIONER FRANKLIN: Okay. But you already
10 have a date in mind and you're going to make your
11 decision.

12 RICK COOPER: Yeah, as I was trying to explain
13 was that this was our time table as we were going
14 forward. And what is easy to -- I couldn't give you an
15 exact date now because we do have a study and we are
16 going to evaluate that information. But if it came out
17 in April, then you could expect a Record of Decision in
18 August of 2011. If it bumps -- say we have dialogue on
19 this until May and -- you could expect it to come out in
20 September. If we have dialogue until June, then you
21 could expect it to come out -- it was just to sort of
22 give you an idea of what place we're in and how far away
23 we are to get to a Record of Decision. So that was the
24 intent of that slide, just to let you know kind of our
25 timetable that takes place.

1 CHAIR WILLARD: Commissioner Lueder.

2 COMMISSIONER LUEDER: Mr. Cooper, since the
3 closure of the ACEC and -- there hasn't been any final
4 decision made, in other words, the Record of Decision
5 hasn't been filed. Can you give us an idea what's been
6 going on on the ground in the area during that time,
7 what kind of activities BLM staff has been performing as
8 far as trail systems and state areas and other
9 improvements that have been going on in the area at that
10 time.

11 RICK COOPER: Within the Clear Creek Management
12 Area, we had a project whereby we did go and remove
13 restroom facilities and rehabilitate staging areas for
14 the purposes of improving opportunity for endangered
15 species habitat. But it was also part of the 1984
16 decision to try to remove the camping/staging component
17 out of that canyon and to put it to alternate locations.
18 We have done improvements on Jade Mill, which is out of
19 the ACEC. We've done improvements on Oak Flat, which is
20 out of the ACEC. We've created some other camping
21 opportunities in the Condon Peak area. And then we have
22 some others that are a little further away and not quite
23 good for camping, but it may be a little far away for
24 staging opportunities. But in keeping with that '84
25 decision of trying to reduce that exposure factor that

1 occurs in the canyon due to camping and staging, we
2 removed that.

3 We also utilized some of the OHV Division funds
4 for doing some restoration work that had been ongoing
5 out there on the barrens, and that was previously
6 authorized funding that we got from the Division. So
7 that work had gone on. About the only other kind of
8 work that's gone on is we've had a botanist out there
9 who's done some tremendous work on *Camasonia benitensis*
10 habitat. He's actually expanded the range of that
11 species through his efforts significantly, which is
12 probably going to affect the recovery of that species.

13 So that's the type of stuff that's gone on
14 there. Other than that, not -- not a lot in the canyon.
15 We had one project that went up in there. We removed
16 those facilities -- those restroom facilities and placed
17 them on other campsites, both Oak Flat and Condon.

18 CHAIR WILLARD: I think it might be best at this
19 point to hold the questions until after we've heard from
20 the EPA. And -- I'm sorry. I was saying I think it
21 would be good to hold questions until we've listened to
22 the other experts and we get all the questions at once.
23 Because I think what we're going to do is go over ground
24 that will be covered in maybe better detail later,
25 especially the science part of it -- unless it's

1 something very specific to something that Mr. Cooper
2 just said, I think it would be more productive to hold
3 the questions. Okay?

4 RICK COOPER: Thank you.

5 CHAIR WILLARD: Thank you, Mr. Cooper.

6 **AGENDA ITEM(C) (2) - PRESENTATION BY ENVIRONMENTAL**

7 **PROTECTION AGENCY**

8 JERE JOHNSON: I'm assuming this is on.

9 Okay. My name is Jere Johnson. I'm the project
10 manager with the Federal EPA Superfund Program in San
11 Francisco. With me today is Daniel Stralka, who's the
12 toxicologist also with the Superfund Program.

13 And I'd like to thank the Commission for
14 inviting us here today to present information on the
15 asbestos exposure and risk assessment we conducted at
16 CCMA. Hopefully we'll be able to answer questions you
17 might have and also to address any issues or
18 misconceptions that have arisen from our report.

19 Next slide.

20 Today I'm going to go a little bit about
21 background information. Mr. Cooper's already covered a
22 lot of it, so I'll be able to go through that relatively
23 quickly. Talk a little bit about asbestos mineralogy
24 and its health affects because it's important to know,
25 and then talk about the exposure assessment where we

1 actually measured the levels of asbestos in the
2 breathing zone of people participating in typical CCMA
3 recreation activities. Talk about those findings and
4 then explain how we incorporated that exposure data into
5 our risk assessment and the results of that risk
6 assessment.

7 Next slide.

8 EPA's mission is to protect public health and
9 the environment, and this is an important orientation
10 for our work at Creek Clear because all the metrics that
11 we used throughout the exposure and risk assessment are
12 public health metrics. So our goal is to prevent
13 disease. And in that vein, we try to provide protection
14 for the entire spectrum, from the smallest child to the
15 oldest senior citizen.

16 Now, as Mr. Cooper explained, we became involved
17 with Clear Creek through the Atlas Asbestos Mine
18 Superfund Site. The Atlas Mine and the Coalinga Mine,
19 which is in the vicinity but outside of CCMA, were added
20 to the Federal Superfund List in the early eighties when
21 it was discovered that they were the sources of the high
22 levels of asbestos fibers that were detected in the
23 California Aquaduct and the drinking water supply for
24 Los Angeles and other southern California cities.

25 So when we selected a cleanup action for the

1 Atlas Mine, which consisted primarily of engineering and
2 erosion controls, we said, you know, we were still
3 concerned about the exposures that were occurring
4 elsewhere in the Clear Creek Management Area and that we
5 would continue to monitor BLM's efforts to minimize
6 those exposures. So in 2004 we got ready to try to
7 de-list the Atlas Mine from the Superfund Site because
8 our cleanup was completed. And we realized we still
9 didn't have sufficient exposure information to really do
10 that evaluation. So with the encouragement of the
11 California Department of Toxic Substance Control and the
12 California Office of Environmental Health Hazard
13 Assessment, we started the exposure and risk assessment
14 for CCMA.

15 Next slide. Next slide

16 So to talk a little bit about asbestos in
17 California, this is the California Geological Survey map
18 of areas of asbestos -- or areas in California that are
19 most likely to contain asbestos. And as you can see,
20 asbestos tends to occur along the foothills of the
21 Sierras and along the coastal range. And you can see
22 the CCMA outcrop here. And, again, it's one of the
23 largest, if not the largest outcrop of naturally
24 occurring asbestos in the continental U.S. California
25 contains both types of asbestos: Chrysotile asbestos,

1 and then the other family of asbestos called amphibole.
2 And the chrysotile asbestos occurs with serpentinite or
3 serpentine deposits. And that's that blue-gray rock
4 that you see all over the state. And it's actually, I
5 think, the state mineral or the state rock. But it was
6 designated such at the behest of the asbestos industry
7 because they were trying to generate interest in
8 asbestos mining in California. The amphibole asbestos
9 occurs with a little different geology, but both
10 geologic conditions and both types of asbestos can occur
11 in the same vicinity.

12 Next slide.

13 So, you know, we don't worry about asbestos if
14 it's in the soil and it's left alone and it's not being
15 disturbed. It's when it's disturbed where it can get
16 into the breathing zone that we start to become worried
17 about the exposures. And asbestos can be disturbed by
18 commercial activities like mining or construction or
19 even personal activities like sports and gardening. And
20 work at the EPA, studies, California and other parts of
21 the United States has shown that even when you have soil
22 with fairly low levels of asbestos in it, from
23 soil-analysis methods, if you disturb it, you can end up
24 with significant levels of asbestos in the breathing
25 zone. And the state of California and many California

1 counties actually have regulations to try to address and
2 control that.

3 Once airborne, if an asbestos particle or fiber
4 is at the right size, it can get deep into your lungs.
5 The body doesn't really care if came from a commercial
6 source or it's already been processed and mined or
7 from -- directly from a natural outcrop. Both would
8 potentially cause disease.

9 Next slide.

10 And this just gives you some idea, asbestos
11 fibers can get, you know, very deep into the lung
12 tissue. This is a human hair and it's showing the size
13 of asbestos fibers. So we're talking about stuff that's
14 very, very small. And frequently you can measure
15 exposures in areas where you actually can't see the
16 exposure because the asbestos fibers are so small and
17 won't be detected by the naked eye.

18 Next slide, please.

19 So the disease potential of asbestos is
20 recognized by all the federal governmental health
21 agencies, the state of California, National Academy of
22 Sciences, and international agencies including the World
23 Health Organization, which specifically said in 1998 the
24 chrysotile asbestos has the potential to cause
25 asbestosis, lung cancer, mesothelioma and other health

1 effects. Now, mesothelioma is a cancer of the lining of
2 the chest cavity. It's a very rare cancer. But the
3 only known cause of mesothelioma is asbestos exposure.
4 So it's kind of the canary in the coal mine as far as
5 asbestos exposure goes.

6 Next slide.

7 So asbestos is a known human carcinogen. It
8 causes lung cancer and mesothelioma, but it also causes
9 significant non-cancer disease. And here we're talking
10 about anything from asbestosis to just lung scarring,
11 things that diminish respiratory capacity, pleural
12 plaques, things that can be picked up on x-rays with
13 trained readers. And the disease potential of asbestos
14 was established by 40 epidemiological studies. So
15 unlike a lot of things which we suspect may be bad for
16 us, we actually have death and disease recorded from
17 asbestos exposure. So we have confirmed that it is a
18 known human carcinogen.

19 Next slide.

20 Now, the cancer risk for asbestos is dependent
21 upon how much you're exposed to, how long you're exposed
22 to it, and the times since first exposure. And this
23 is -- the time since first exposure primarily has to do
24 with mesothelioma risk. Most asbestos disease has a 20
25 to 40-year period. But with mesothelioma, there's

1 actually a particular mathematical increase that happens
2 if you're exposed at a younger age versus an older age.
3 So a ten-year-old exposed to asbestos is going to be at
4 the greater risk for mesothelioma than a 30-year-old
5 exposed to the same asbestos and the same concentration
6 and for the same time. There is also no known threshold
7 for the carcinogenic effects. So we don't know how much
8 or how little exposure is actually required to cause
9 disease.

10 Next slide.

11 So now I'm going to talk a little bit about our
12 exposure assessment.

13 Next slide.

14 Okay. Our goal was primarily to update the last
15 risk assessment that had been done for CCMA by BLM to
16 try to use the latest state-of-the-art both sampling and
17 analytical techniques so that we give BLM a little more
18 data which were to assess their choices and the
19 exposures that were occurring on CCMA.

20 So what we wanted to do is we wanted to do lead
21 and trailing sampling. We wanted to do this because the
22 work that was done by the University of California in
23 the late seventies showed that trailing riders had
24 higher concentrations of exposure than leading riders.
25 So we wanted to see if, in fact, that was the case.

1 We wanted to do child and adult sampling
2 because, as Mr. Cooper mentioned, CCMA is a very popular
3 destination for people with children. This a
4 six-year-old girl on her motorcycle getting ready to
5 ride. And as I said, for mesothelioma, we're
6 particularly concerned of the age of the first exposure
7 but also because when you've got a 20 or 40-year-old
8 latency period, I could probably go out and ride and I'm
9 going to die of something else first, but a child has a
10 life expectancy that exceeds the latency period for
11 asbestos disease.

12 We wanted to do typical riding practices and
13 uses. So we wanted to know what a typical user would be
14 exposed to. So from most of our sampling, the actual
15 people doing the sampling were members of the Coast
16 Guard Pacific and Atlantic Strike Teams. These are the
17 emergency responders that go out like for Hurricane
18 Katrina. And we asked for volunteers. These were
19 people that do off-road vehicle riding in their private
20 lives, and they volunteered to do the sampling for us.
21 And what we told them was that with the exception of
22 keeping the same order, so if they were the first
23 trailing rider, they would maintain that order
24 throughout the ride, we told them to ride as they would
25 normally ride. We didn't want to bias a sample by

1 telling them to ride in the dust or to avoid the dust.
2 We told them to keep a safe distance because we wanted
3 to make sure that we were measuring asbestos exposures
4 and not the risk of breaking an arm. So we just told
5 them to ride as they would normally ride. And we also
6 talked with BLM and their rangers and also members of
7 the Salinas Ramblers Motorcycle group to find out
8 what -- how people normally ride there, where they ride,
9 what the typical uses were. And then we collected
10 actual breathings on samples. So we had these samplers
11 wear pumps and backpacks on their back, and we had
12 asbestos collection filters on their -- mounted on their
13 shoulders to collect information on the breathing zone
14 concentrations for adults, and then we had these same
15 people wear filters down towards the waist so they could
16 collect samples that would be representative of the
17 breathing height if a child were participating in
18 activities.

19 Next.

20 So what we did is in 2004 to 2005 we conducted
21 five activity-based sampling. And that's why we call
22 these activity-based because these are the kinds of
23 samples -- this is the kind of sampling EPA does now for
24 asbestos. We're actually participating in the activity
25 rather than sticking an air pump somewhere on a road or

1 on a hill and using that information. The
2 activity-based sampling gives us real exposure
3 information. And we did five different events because
4 we wanted to get different weather conditions,
5 meteorological conditions. We wanted to sample when it
6 was dry, when it was wet, you know, when it had been
7 raining, you know, recently. And we conducted these
8 typical activities. So it was motorcycle riding, ATV,
9 SUV driving and riding -- and this is primarily on the
10 access road. I think you guys will be on it tomorrow.
11 It runs through CCMA. Hiking, camping, staying over,
12 sleeping in your tent. Decon, which is the vehicle
13 washing and vacuuming and also fence building. Because
14 it was our understanding from talking to CCMA users,
15 frequently volunteers will come out help BLM to build
16 fences and then they're also riding during those
17 activities. And we collected hundreds and hundreds of
18 samples and analyzed over 275 of them.

19 Next slide.

20 This is just a map of -- well, let's see --
21 of -- it's kind of hard to see, but this red outline is
22 the asbestos area of concern. Where we conducted our
23 sampling was coming in from the west side. So it was
24 this area right here. And this, again, is an area
25 that's typical use and it's an area that we chose out

1 there talking to BLM and riders about how and where they
2 ride at CCMA. Right down here, just for orientation, is
3 the Atlas asbestos mine.

4 Next slide.

5 This slide -- and it's really hard -- a little
6 hard to read here, but it's in our report -- shows the
7 routes that we used for our sampling. We did a fairly
8 extensive route. We ran the samplers for about an hour
9 each for each event. And the reason we chose that is
10 because of our model sampling for asbestos is difficult.
11 You have to make sure that you don't get so much dust
12 and other things around the filter that the microscopist
13 can't read the filter and find the asbestos fibers. So
14 we determined that an hour-long sampling is about
15 optimal for us to get a representative sample without
16 causing overload issues.

17 Next slide.

18 Now, this gets in the weeds a little bit, but --
19 you know, with asbestos, unfortunately, this is
20 important information. For our analytical method, we
21 used the ISO transmission electron microscope method --
22 TEM method. And this is a pretty much state-of-the-art
23 method for asbestos analysis. And what it does is it --
24 the TEM microscope will actually magnify the air filter
25 between 10,000 and 20,000 times. And the reason,

1 besides it's, you know, a really good method for
2 actually being able to see and characterize the fibers,
3 but the other reason we chose it is because it has very
4 strict counting rules. Asbestos analysis isn't like
5 analysis for most environmental contaminants where you
6 stick a sample in one end of the machine in the
7 laboratory and it prints out a concentration at the end.
8 For asbestos analysis, a trained microscopist actually
9 has to look at the asbestos filter through the
10 microscope and then identify, count, measure, and
11 characterize by type of asbestos every fiber that they
12 see through that field of view. And especially with the
13 environmental sampling, the asbestos fibers aren't just
14 lying there waiting to be counted; they're frequently
15 mixed in with bundles and there's going to be vegetable
16 matter in there and dirt and all sorts of stuff. So for
17 quality assurance and quality control purposes, it's
18 very important that there are very strict rules on how
19 and what the microscopist counts. So that's why we used
20 the TEM method. But, also, the TEM method can
21 distinguish the type of asbestos that's seen in the
22 sample. So it can tell if it's a chrysotile or one of
23 the amphibole family.

24 So what we did is we gave them very strict
25 counting rules and we told them to count and

1 characterize and measure every fiber they saw when --
2 through the microscope. But in our exposure risk
3 assessment, we only used the fibers of a size called a
4 PCME.

5 Next slide.

6 And PCME stands for Phase Contrast Microscopy
7 Equivalent. And the Phase Contrast Microscope is the
8 type of microscope that were used in the original health
9 studies when they had the death and disease that was
10 resulting from asbestos exposure. They went back to try
11 to look at the air filters that they collected to try to
12 do some correlation between exposure levels and the
13 disease outcomes that they were observing.

14 The Phase Contrast Microscope will magnify a
15 sample about 400 times. So they could only see fibers
16 that were longer than 5 microns and wider than .25
17 microns. So those are the fiber sizes that are used in
18 all the health metrics for asbestos exposure because
19 that was the microscope they had available at the time
20 they did the original epidemiological studies.

21 So our fiber dimensions that we used, again, are
22 greater than 5 microns long, .25 microns to 3 microns
23 wide. We broke it off at 3 microns because if it's
24 thicker than that, it's not going to get in the lung.
25 And then with a 3:1 aspect ratio, which means it's three

1 times longer than it is wide. And then, again, that's
2 consistent with what they would see under the PCME
3 microscope.

4 Next slide.

5 This just gives you an idea of -- this is the
6 same sample through the microscope with the increasing
7 magnifications. So you can see 200 -- this is -- the
8 PCME microscope is about 400. And you can kind of see
9 in a better picture there's a little fiber here. This
10 is the -- at 2,000, that's a fiber. This is at 10,000.
11 So this is equivalent to the TEM microscope. You can
12 see how much better it is in enabling you to actually
13 see the fibers and then measure and characterize them.

14 Next slide.

15 So what were our findings?

16 Next slide

17 Okay. Our first finding was that the activity
18 drives the exposure.

19 Next slide.

20 Okay. This slide shows the activities on the
21 X axis. And the PCME, again, the fibers of health
22 concern, on the Y axis. PCME fibers per cubic
23 centimeter. And each dot or icon on here represents a
24 different sample result. The first column right here,
25 this is our ambient air samples. So while we were at

1 CCMA doing activity-based sampling, we also had fixed
2 samplers operating to just collect air samples in the
3 ambient air away from the activity. This first column
4 here is motorcycle riding, increasing concentrations;
5 ATV riding; SUV riding; followed by hiking, camping,
6 power spray wash, hose wash, HEPA vacuum, regular
7 vacuum, and finally the fence-building activity where
8 just basically digging post holes. So as you can see,
9 the activities that created -- probably would create the
10 most dust also had the highest asbestos exposures.

11 Next slide.

12 We also found out that as was discovered in the
13 work that UC Berkeley did in the late seventies, riding
14 positions, important trailing riders had higher
15 exposures than lead riders.

16 Next slide.

17 So this is, again, the PCME fibers per cubic
18 centimeter on this axis and then activities on this
19 axis. This is the ambient levels, again, for reference.
20 The first column in each of these, the little yellow
21 triangles, are the lead riders. The second is the first
22 trailing. Those are the blue X's. And the purple dots
23 are the second trailing. So as you can see, the
24 trailing riders have higher exposures than the lead
25 riders. And this is the hiking. And we got measurable

1 asbestos exposures for both those activities, too. And
2 this kind of makes sense because in many conditions the
3 trailing riders are going to be encountering dust clouds
4 generated by the lead riders.

5 Next slide.

6 The other thing we found is that the children
7 are a special concern.

8 Next slide.

9 This is the ratio of the child PCME fibers to
10 the adult PCME fibers for people wearing those same
11 cassettes at the same activity at the same time. So,
12 basically, we were taking someone's cassette from their
13 shoulder and the one from their waist and comparing
14 them. The lower ratio of 1, the adults have higher
15 concentration than the child filter. Above 1, the child
16 had a higher concentration than the adult. And what we
17 found out was that in about 64 of the samples --
18 collocated samples, the child exposure was actually
19 higher.

20 Next slide.

21 And then we found that weather does not
22 eliminate exposure. We did the sampling in September;
23 we did it in November of 2004. It had rained a lot in
24 October; it had rained quite a bit in November. And
25 actually in the low-lying areas, there were still

1 puddles. One of the issues at Clear Creek is --
2 Mr. Cooper showed pictures of those barren areas. Those
3 barren areas are serpentine outcrops. They don't
4 support any plant life. And so there's no organic
5 matter in the soil, so those things dry out really
6 quickly. And they just don't hold the moisture. The
7 only time that we got a reduction in exposure was the
8 sampling we did in February of 2005 when it actually
9 rained during the sampling event. And CCMA was actually
10 closed from that because the rainfall was so great,
11 there was an erosion risk.

12 Next slide.

13 So, again, this is the PCME fibers per cubic
14 centimeter and then each of the activities. These first
15 columns are dry-weather activities. These are the
16 September sample results. So for each activity, the
17 first column is the dry-season activity. And I want to
18 point out again, because there's been some discussion
19 about the fact that we did the sampling when CCMA was
20 closed for the dry-season closure, it wasn't closed when
21 we started this effort. In fact, our data is what
22 prompted BLM to close it for the summer.

23 The second column here is in November when it
24 was wet out there. We called it the moist conditions,
25 but it wasn't really raining. And you can see for the

1 ATV we actually got higher exposures, also for the SUV
2 measured in November than we did in September.

3 And then, finally, the last column is the wet
4 season when it was actively raining and we saw -- then
5 we finally did get some reduction in exposure levels.

6 Next slide.

7 And then we found that the SUV exposures were
8 significant. So just driving your car into the CCMA on
9 the road to get to a staging area resulted in exposures.

10 Next slide.

11 This first one is with the windows open, and the
12 second one is with the windows closed and the
13 ventilation in the SUV set for re-circulate. We still
14 got detectable levels of asbestos.

15 Next slide.

16 And then we found about 8 percent of the PCME
17 fibers that we detected were amphibole asbestos. So it
18 wasn't just chrysotile there; it was also amphibole.
19 One of the advantages of doing activity-based sampling
20 or actually replicating the activity is that we were
21 also getting a bigger geographic area represented on our
22 samples. So it's different than going to a single point
23 and taking a single soil sample. We actually got a
24 better representation of what people were being exposed
25 to. And California Geological Survey has told us that,

1 you know, usually when you find chrysotile and amphibole
2 asbestos there's going to be the other type that's going
3 to be geologically present in the vicinity.

4 Next slide.

5 So now that we had the exposure data on what
6 people were being exposed to, the question we had is
7 what is the risk from this exposure. Is it significant?
8 Is there any increased risk. So we conducted our risk
9 assessment.

10 Next slide.

11 So what we did is to really get a feeling for
12 what these exposures meant, we took our exposure
13 concentrations and we rolled them into five recreational
14 scenarios. So somebody that rides at CCMA on a weekend
15 or a day or hikes or hunts or if they're combined rider
16 workdays; so somebody that comes in and does fence
17 building and then rides. And then BLM also asked that
18 we do two worker scenarios. So we did a BLM ranger
19 who's on an ATV or motorcycle patrol or someone that's
20 just on truck patrol on the county road. And for those,
21 because they tend to do this as solo events, we only
22 used the lead rider data.

23 Next slide.

24 So this gives you some idea for like the
25 weekend-rider recreational scenario, how we kind of

1 broke that -- and we figured people would drive in for
2 an hour. And so for that we used our SUV data. And
3 then you add the motorcycling. And we had exposure
4 information for all these activities, so we time-rated
5 them to roll it into a weekend-rider scenario.

6 Next slide.

7 So, again, we only used PCME fibers. So only --
8 even though we had a lot of other fibers, we counted
9 them, we only used the ones that we know are most
10 closely linked to health outcomes. And we used both
11 EPA's and the California EPA's asbestos toxicity values.
12 Now, both these values are derived from the same health
13 studies of using PCME fibers. But the EPA -- Federal
14 EPA standard is based on the risk of lung cancer and
15 mesothelioma to the general population, smokers and
16 non-smokers and in women. The California EPA Toxics
17 Devalue is derived from the same data but they used the
18 risk of mesothelioma to non-smoking women. So their
19 risk value is actually eight times higher than ours.
20 And we originally did both our risk value and the
21 California value because obviously the site's in
22 California, and we thought that this would provide
23 better information to the public because our value's
24 kind of an average value, theirs is kind of a high-end
25 value. But for the Commission as a state agency, for

1 you guys, the California state value is probably the one
2 that would be more -- most applicable. And we followed
3 standard EPA Superfund Risk Assessment guidance in
4 conducting the risk assessment. So standard protocols
5 using PCME fibers.

6 Next slide.

7 This slide's a little busy. I'll try to walk
8 you through it. So what we did is for the recreational
9 scenarios, we figured someone went to CCMA for one visit
10 a year, five visits or twelve visits. And so for the
11 weekend scenario, one visit a year is one weekend. For
12 the day scenario, one visit is one day. And we based
13 these frequency of visits from the survey data that had
14 been done of CCMA use. And, in fact, the BLM 1992 Risk
15 Assessment used the five visits as kind of an average
16 number. So then we got -- you know, got a little more
17 than a higher number. For the worker scenarios, based
18 on what BLM requested that we do, we did one day, sixty
19 days, a hundred and twenty days for their workers.

20 As recommended by our guidance -- and, again,
21 this is standard risk assessment protocol -- we did
22 30-year recreational exposure periods. So this would be
23 for someone that goes to CCMA for 30 years. And from
24 what we understand from use information at CCMA, this
25 isn't necessarily outside the experience of a lot of

1 CCMA users. So we calculated excess cancer -- lifetime
2 cancer risks for an adult that went to CCMA for
3 30 years, a child who goes for 12 years with their
4 parents like from age 6 to 18 and then rides 18 years on
5 their own, and then a child who only goes for the
6 12 years, say 6 to 18. We used both our mean
7 concentration, our average concentration data and then
8 the 95 percent upper confidence limit concentration.
9 And this is a statistical artefact. What it means is
10 it's a concentration that if you were going to replicate
11 the sampling thousands and thousands of times that your
12 sample number would fall at or below that value
13 95 percent of the time. So it's kind of -- it's an
14 upper confidence limit concentration. And then we --
15 again, keeping with standard risk assessment guides, we
16 estimated the excess cancer risk over a 70-year lifetime
17 with a 30-year exposure.

18 Next slide.

19 And what we found was that when we estimated
20 these risks that many of them were above what EPA
21 considers in the Superfund Program to be an acceptable
22 risk range for excess lifetime cancers. Any cancers
23 more than 1 in 10,000 EPA considers to be a level that's
24 potentially unacceptable and requires some sort of
25 mitigation.

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Next slide.

So this is the excess lifetime cancer risk for an adult using EPA's toxicity value. The blue boxes are one visit to CCMA a year, the green are five, and orange are twelve. When you get here to the worker scenarios, the blue, again, still one, the green is sixty days, and the purple is a hundred and twenty days. The top of each of these boxes is the 90 -- using the 95 percent upper confidence limit exposure concentration, and the bottom of the box is using the average concentration. So this axis is excess lifetime cancers. Anything above this line, which is 1 in 10,000 excess lifetime cancers, is considered by the EPA Superfund Program to require mitigation. So, for example, I think this is -- I can't read this either -- this is weekend rider. The second is day rider with ATV, day rider motorcycle, hiker, hunter, workday rider with motor -- ATV workday rider with motorcycle, ATV patrol for the workers, SUV patrol, and -- or now, excuse me, motorcycle patrol for the workers and SUV patrol. So you can see that with the exception of maybe hiking, for most of these activities, going to CCMA more than one day a year puts you at an excess lifetime cancer risk that the EPA would consider to be unacceptable.

1 Next slide.

2 This is the same data but using the California
3 EPA toxicity level. And as I mentioned earlier, it's
4 eight times higher than the EPA value. So this shows
5 that using the California value, even one visit to CCMA
6 a year with the exposure levels that we measured would
7 put you in that unacceptable cancer risk.

8 Next slide.

9 This is the child that goes for twelve years.
10 This is using EPA's IRIS toxicity value. Obviously for
11 the child we don't have the -- the workday or the BLM
12 worker scenarios, but, again, you can see they're quite
13 high.

14 Next slide

15 And this is the child risk using the California
16 toxicity value. So you can see you're getting way up
17 there. This is the 1 in 100 excess lifetime cancer
18 risk.

19 Now, you may be wondering why we bothered to go
20 through this whole risk assessment protocol and
21 calculate excess lifetime cancer risk; why didn't we
22 just like take our exposure data and compare it to the
23 OSHA standard. The reason we don't do that is because
24 in public health risk assessment, you don't use the OSHA
25 standard. The OSHA standard is not a health protective

1 or health-based standard. It was the best that OSHA
2 could do to try to provide some protection to workers
3 while still giving employers a reasonable way to monitor
4 for exposure. So the OSHA standard is this side for
5 healthy adults who are in a mandatory medical monitoring
6 program. It's not designed for the general public and
7 it's not designed for children. In fact, if you read
8 the preamble to the OSHA rule where it says that
9 exposure limit, OSHA says that exposure at this level
10 still presents significant risk of disease, but it was
11 the only cost-effective limit that they could implement.

12 So the OSHA exposure level is actually a 1 in
13 1,000 excess lifetime cancer risk. So it's way up here.
14 It's outside what we would consider as acceptable for
15 public health and particularly for children.

16 Next slide.

17 EPA does risk assessments all the time. We do
18 them not only in our Superfund Program but also in our
19 air programs, our water programs. And all risk
20 assessments have some level of uncertainty. Again,
21 we're estimating excess lifetime cancer risks. We're
22 not doing a post-spective study where we're looking at
23 death and disease and working backwards. So we try to
24 conduct risk assessments that neither over-estimate or
25 under-estimate risk. But because it's our mission to

1 protect public health, if anything, we want to make sure
2 we're not under-estimating risk. And in all risk
3 assessments, we include an uncertainty section. So the
4 public knows exactly what assumptions went into these
5 risk assessments, how -- you know, what we know about
6 them, what we think the over-estimations are, and what
7 we the under-estimations are.

8 Next slide.

9 So for the risk assessment we did for CCMA, the
10 way that we think we may have over-estimated the risk is
11 that even though there's amphibole detected, most of the
12 exposure is to chrysotile asbestos. And there's some
13 evidence that the lungs clear chrysotile asbestos more
14 readily than they do amphiboles. It doesn't mean they
15 clear all of it. It doesn't mean it doesn't leave the
16 body when it's cleared. But there is some evidence that
17 the fiber shape of chrysotile tends to be more readily
18 cleared than amphibole. However, it still causes
19 asbestosis and cancers.

20 Also, there's emerging evidence now that the
21 amphibole type of asbestos may be more potent in terms
22 of causing mesothelioma than chrysotile. So considering
23 that the risk models put both in there, it's possible
24 that we could be over-estimating for the chrysotile
25 exposure. And the other thing is that, you know, risk

1 numbers are based on occupational exposures. There are
2 around the world many documented exposures to ambient
3 exposures that weren't occupational that resulted in
4 death and disease, but most of the epidemiological
5 studies that were first done on asbestos exposure were
6 from workers. So we're extrapolating those exposures to
7 exposures at CCMA that are not in the 40-hour work
8 environment.

9 Next slide.

10 But there may also be many ways in which we have
11 under-estimated exposure. And, actually, for this site,
12 we think the under-estimation is more significant than
13 the over-estimation. And the reason is that asbestos
14 causes debilitating and frequently fatal non-cancer
15 diseases: Asbestosis, scarring of the lungs. EPA
16 doesn't have toxicity value for a lot of cancer,
17 diseases from asbestos exposure, but we're developing
18 one. So all these risks have only to do with the cancer
19 aspect; they don't look at the other part of it. And
20 what we're finding around the country in places like
21 Libby, Montana, is that the non-cancer diseases are
22 actually much more prevalent than the cancer diseases
23 from the asbestos exposure. Also, early-life exposures
24 may present a greater risk. Again, I had mentioned that
25 for mesothelioma being exposed as a child is much more

1 significant than adult exposure. And then we didn't
2 assess the take-home exposure. So what happens when you
3 put all your camping equipment and your muddy clothes in
4 your car, they dry out, the asbestos gets into the car,
5 and then it's re-circulated. And, actually, studies
6 have been done by EPA in relation to the World Trade
7 Center and other things that have shown that when
8 asbestos fibers get into carpeting, they can be very
9 hard to remove and frequently just keep coming up and
10 settling again.

11 One thing I'd like to address here today is in
12 the Draft version of our Risk Assessment, there was a
13 statement in the uncertainty section that said the risk
14 could be lower than we measured, perhaps zero. And
15 Mr. Cooper at BLM pointed out to us that how can you say
16 that when you've been telling us that these exposures
17 are significant? That language was in the Draft as a
18 part of -- kind of standard boilerplate language that we
19 put in the uncertainty sections. As I said, we do risk
20 assessments all the time. So we do have standard
21 language that we use.

22 A lot of the time when we're doing risk
23 assessment, particularly at our Superfund site, we're
24 doing it for a chemical we found in the soil over here
25 in the back 40, and we're estimating the risk if that

1 chemical gets into the groundwater, if the groundwater
2 is ever used for drinking water and if that one rat
3 study is right to show that this was a problem, then the
4 risk could be at the level we're estimating. And in
5 those cases, because we're making a lot of assumptions
6 all the way along and we have, you know, laboratory data
7 from animal studies I may show it's toxic, we'll say we
8 may have over-estimated risk. When you count all these
9 assumptions together, it could be zero. That does not
10 apply in this case. We have documented breathing zone
11 concentrations to a known human carcinogen. It's not --
12 the perhaps zero thing wasn't applicable; it wasn't even
13 in the ballpark. And so when that was pointed out to
14 us, we realized -- we added that as a cut and paste and
15 we took it out. So it's not as exciting as the
16 conspiracy theory, but that's exactly what happened.
17 And I wrote the study, so I can tell you that's what we
18 did.

19 Next slide.

20 So our overall conclusions -- and I might add
21 that these conclusions are -- both our study, our
22 methods, our findings and our conclusions were all
23 reviewed by the California Environmental Protection
24 Agency -- agencies, the Office of Environmental Health
25 Hazard Assessment, the California Air Resources Board,

1 and the California Department of Toxic Substances
2 Control. And they all concur with our study.

3 So our overall conclusions are that the
4 activities drive the exposure. So the more dust
5 disturbance or soil disturbance you're doing, the higher
6 the exposure you're going to get. Children are a
7 special concern. Not only were some of the levels that
8 we reported for children higher, but children's life
9 expectancy exceeds the latency period for
10 asbestos-related disease.

11 The higher your exposure, the higher the risk.
12 Reducing the exposure will reduce the risk, but wet
13 conditions don't eliminate exposure. And the only time
14 we really saw a significant decrease was when it was
15 actively raining during a sampling of it.

16 So our overall conclusion is that the exposures
17 we measured at CCMA are high, and the resulting health
18 risks are of a concern.

19 That's the end of my presentation.

20 CHAIR WILLARD: Thank you. Thank you.

21 DEPUTY DIR. GREENE: Do you want -- I think we
22 need to take a break and start -- perhaps if there's
23 questions of the Commission or the EPA or if you want to
24 wait, certainly we can determine that at the break.

25 CHAIR WILLARD: Yeah, I think let's take a

1 break. And then we'll finish up, and then we'll have
2 the Q and A. So back at 3:00. So short break, please.
3 Thank you.

4 (Brief recess.)

5 CHAIR WILLARD: Please take your seats. We'd
6 like to resume the meeting.

7 Deputy Director.

8 DEPUTY DIR. GREENE: Thank you, Chair and
9 Commissions.

10 If I may, before Dr. Nolan begins, I just wanted
11 to put it into context a little bit about what the
12 Division's role is in this independent study.

13 As many of you know, the partnership that we
14 have with BLM goes back many, many decades. And so in
15 the document, the Commission -- when the BLM presented
16 an overview in our last Commission meeting, we moved
17 forward with providing comments to BLM on their
18 document. One of the things that we commented on as a
19 Division was were there avenues by which recreation
20 activity could still occur at Clear Creek in an active
21 management format. So, for instance, could you look at
22 perhaps not recreating there in the hot dusty season?
23 Could you look at perhaps working -- could you perhaps
24 look at maybe children at a certain age wouldn't go to
25 Clear Creek. Don't know. A variety of ideas that we

1 were putting out that would be possibilities that
2 instead of the only option is being for closure or full
3 365 days of the year open, could we take a creative
4 approach? So as we addressed that, we also, looking at
5 the BLM document where it indicated that more data was
6 necessary, then as a state, clearly we have a
7 significant investment in the Clear Creek Management
8 Area, approximately \$7 million has been invested there
9 over the years, the last ten years about \$4 million. So
10 we moved forward to try and get some more of that data
11 that could be helpful to our partners that they could
12 then look at and examine and see if there are any
13 possibilities where there may be some room, aside from a
14 365-day year closure.

15 So at this point in time, this is -- the authors
16 of the report that we commissioned are here today. And
17 so that was the background that I wanted to share with
18 you.

19 CHAIR WILLARD: Okay.

20 Welcome.

21 **AGENDA ITEM(C) (3) - PRESENTATION BY INTERNATIONAL**

22 **ENVIRONMENTAL RESEARCH FOUNDATION**

23 DR. ROBERT NOLAN: Thank you. I appreciate the
24 invitation to speak here today. I thank the
25 Commissioners and Daphne Greene and Chief Jenkins for

1 the opportunity. And I appreciate the people that
2 attended to listen to what we have to hear -- to say
3 today.

4 I wanted to tell you a little bit about my
5 background as I begin. My name's Robert Nolan. I have
6 a doctoral degree in chemistry. I became interested in
7 asbestos in the early seventies because I grew up in an
8 industrial town in Paterson, New Jersey, and my neighbor
9 developed asbestosis. He fabricated insulation
10 materials for the U.S. Navy during the Second World War,
11 and he died an agonizing death. And I was curious about
12 what caused these problems and how society deals with
13 them. And I later joined the Irving Selikoff Research
14 Group of Mt. Sinai School of Medicine. Irving Selikoff
15 and Dr. Cooper, who did the study at the University of
16 Berkeley, are two of the giants of asbestos research in
17 the 20th Century. So BLM couldn't have had a better
18 person to do their 1979 study.

19 In 1986 I got my Ph.D. I became a stoney-walled
20 Herbert fellow of pulmonary medicine at Mt. Sinai School
21 of Medicine. There's not many chemists that become
22 fellows of pulmonary medicine. And I also had a
23 National Research Council fellowship to study chrysotile
24 asbestos in Russia, which is the largest asbestos
25 complex in the world, the Uralasbest Complex. I've been

1 a consultant as a fellow with the Cypress Fulbright
2 Foundation for their asbestos deposits on Cypress that
3 they -- and also they have environmental mesotheliomas
4 caused by tremolite there. So I have a long history. I
5 was a consultant to the Consumer Products Safety
6 Commission on their tremolite asbestos and children's
7 play stands. And last year I testified before the
8 Congress on the Ban Asbestos Bill. And Dr. Wilson, my
9 colleague, testified before the senate on the same bill.
10 And as of today, asbestos is still a legal product in
11 the United States and worldwide. A little over
12 2 million tons per year are produced. It's all
13 chrysotile asbestos. And the major countries involved
14 are the so-called BRIC: Brazil, Russia, India and
15 China.

16 Could I have the first slide.

17 This is the title of our talk. Dr. Wilson is
18 our risk estimator. John Kelse is our industrial
19 hygienist. He was trained in the Air Force. He has
20 30 years of experience collecting fiber samples.
21 Dr. Gordon Nord and Dr. Langer are geoscientists. They
22 helped with the mineral characterization. Dr. Nord's
23 thesis advisor was Prof. Wank from Berkeley, who was the
24 geoscientist for the Cooper study. And I organized the
25 study and helped put it together.

1 Next slide, please.

2 This was not supposed to be a comprehensive
3 study. We were asked to do what could be characterized
4 as a spot check to determine previous assertions that
5 OHV recreation was always of concern with regard to the
6 potential health risks associated with the serpentinite
7 rock at CCMA.

8 From 1979 we knew that there were times when you
9 really didn't want to ride at Clear Creek. The question
10 is, is that 365 days a year.

11 Go to the next slide, please.

12 So we limited our sampling only to motorcycle
13 riders. Cooper reported motorcycle riders on average
14 are exposed to about 3 fibers per milliliter at Clear
15 Creek in '79 -- or '78 when he did his study. The EPA
16 people found about an order of magnitude less, about .3.
17 So we thought that motorcycle riders were among the
18 highest exposed, and I think they're among the most
19 frequent people who arrive at Clear Creek. And we
20 didn't have the resources to look at all the different
21 types of vehicles like the EPA did, so we limited
22 ourselves to motorcycle riders.

23 Go to the next slide.

24 Now, NIOSH (National Institute for Occupational
25 Safety and Hazard) all of the asbestos risk assessments

1 are based on occupational exposure to asbestos. And
2 occupational exposure to asbestos is not measured by
3 counting all the fibers in the air. Only an index is
4 used, and those are the fibers greater than 5 microns
5 in length visible by phase-contrast. There's two
6 important factors: One is the concentration to which
7 you are exposed, and the duration of time which that
8 concentration occurs. And those are fibre/milliliter
9 years. If you smoke a pack of cigarettes a day for ten
10 years, you have a ten-pack-year history of smoking. And
11 there's a similar cumulative exposure for asbestos.

12 Now, could we go to the .pdf file. There we go.

13 Now, I wanted to give you a couple of visuals.
14 This is our industrial hygienist. That's John Kelse.
15 He's putting these pumps onto the different riders at
16 the CCMA. We used two riders. I don't think it's
17 necessary to use more than two, at least Cooper's group
18 said that. After you go to the second rider -- the
19 second or third rider, exposures are pretty much the
20 same. So limited ourselves to two riders.

21 Go to the next slide.

22 And we asked our riders not to ride through the
23 dust clouds of the rider in front of them, and we tried
24 to space them out a little bit of a distance. You heard
25 earlier that this introduces a bias into the study,

1 which I am willing to introduce because I want to lower
2 the exposures as I can through riding practices.

3 Okay. Next slide.

4 Now, this -- as you can see them coming around
5 up to Jade Mill. They're still separated at a distance,
6 and there's no visible dust on the day that we collected
7 these samples.

8 Go to the next slide.

9 This is a hiker who just walked around and we
10 collected some samples on them. These samples are
11 personal samples. They're collected in the breathing
12 zone, the people who are doing these various activities
13 in the park.

14 Next.

15 Now, this is Kelse putting area samples on the
16 side of the road to collect background samples. And we
17 collected three types of background samples: Total
18 dust, which is a gravimetric measure; it's a mass per
19 unit volume of air. And we collected respirable dust,
20 which is the mass per volume, but it's only the dust
21 that's respirable. And in the center is this black cowl
22 where you collect the fiber samples. These samples were
23 collected using the NIOSH 7400 protocol.

24 Next.

25 Now, we analyzed our materials by transmission

1 electron microscopy. And we did that because we wanted
2 to count -- it allows us, we did a 20,000 times
3 magnification. So, basically, we see all of the
4 airborne fibers. And unlike our colleagues at the EPA,
5 we did not limit them to .25 microns. That's actually
6 the -- we counted all the fibers. If they were not
7 visible by light microscopy, we counted them anyway. So
8 this basically creates a worst-case scenario. Now, this
9 is not that easy to see, but all of the things are in
10 the report that we submitted. These top six fibers are
11 all fibers or fibrils. The bottom six are all fiber
12 bundles. Now, the sine qua non of asbestos is that it
13 does not occur as a single -- it generally occurs as a
14 fiber bundle. And then when you manipulate it, it
15 breaks apart to become individual fibers or fibrils.
16 Fibrils are single units. Fibers are a couple of units.
17 And fiber bundles are a lot of units. So whenever you
18 collect asbestos samples, particularly like these, you
19 would expect to find fiber bundles.

20 Go to the next slide.

21 And this is a fiber. It's about a tenth of a
22 micron in diameter. It's about 5 microns long. And
23 it's a magnesium silicate fiber, and that's -- all of
24 the serpentine minerals have about the same element of
25 composition. But this is the one that is the most

1 common. Ninety-five percent all of the asbestos ever
2 produced in the world is chrysolite. Only a very small
3 percentage of the other two commercial amphiboles, which
4 are amosite and chrysolite. And then amphibolite was
5 only produced in Finland and India for a brief period of
6 time. And tremolite and actinolite asbestos were never
7 really in commercial commerce. There are no large
8 commercial deposits of tremolite that were exploited
9 commercially in the world.

10 Next slide.

11 Now here you see the fiber bundle. This thing
12 is composed of thousands of individual fibrils that are
13 bundled together. And we counted these in the exposure
14 index. Those 12 chrysolite fibers were all the fibers
15 that we found in the air samples that we collected.

16 Go to the next slide.

17 Now, there are no fiber bundles for the
18 tremolite. And if you notice, this tremolite is -- if
19 you're look at the data in the -- our report, these
20 fibers are fatter, they're all electron opaque, and
21 they're acicular. This is not tremolite asbestos. This
22 is acicular tremolite, which a tremolite needle. Now, I
23 understand this problem because I've traveled all over
24 the world and I've collected many, many tremolite
25 samples. Some of them are asbestos, some of them are

1 not. I've looked at all the tremolite samples used in
2 experimental lab studies. I've looked at tremolite
3 samples that are associated with environmental
4 mesothelioma. None of them look like this. All
5 tremolite -- the only tremolite asbestos causes
6 mesothelioma in a fibril exposure to tremolite. Now,
7 there was a rule made by OSHA in about 1990 where these
8 materials were taken out of the asbestos standard in
9 OSHA, which is the Occupational Safety and Health
10 Administration. So we don't know if these materials
11 are, quote, safe, but we know they're not asbestos and
12 they don't belong in the asbestos standard. So we
13 included these in our risk assessment just to make it a
14 worst-case scenario. But we did not find evidence of
15 tremolite asbestos in Clear Creek Management Area. And
16 to our knowledge, no one else has provided convincing
17 evidence that that exists.

18 Could I have the next slide.

19 Now, you can see that this is a big blocky
20 fiber. Now, this would not be counted in the standard
21 because it's less than 5 microns. It's 3:1 aspect
22 ratio. And none of the tremolite fibers that we found
23 had very high aspect ratios. A characteristic of
24 asbestos is that it grows long and thin and it has a
25 narrow width distribution. So as it grows long, it has

1 a high aspect ratio. None of the fibers there had a
2 high aspect ratio.

3 Now, cleavage fragments and acicular fragments,
4 as they grow longer, they grow fatter. So they rarely
5 get aspect ratios above 10. But tremolite asbestos,
6 it's common to find aspect ratios of 30, 40 or 50,
7 because as they get long, they stay narrow. So we
8 included this just to make our case the worst possible,
9 but I don't think these are actually tremolite asbestos.

10 Could I have the next slide.

11 Now, these are tremolite asbestos from Korea and
12 these are known to cause disease in experimental
13 animals. And if you look -- this is a field emission
14 SEM photograph. And if you look carefully at this,
15 you'll see it's composed of thousands and thousands of
16 individual fibrils. And these fibrils break apart, and
17 the long thin fibers from these are what causes
18 mesothelioma. Now, you heard some discussion about
19 mesothelioma here today and they said asbestos is the
20 only known cause of mesothelioma. Fibrous areolite from
21 Turkey is known to cause human mesothelioma, and it's
22 also a Group I carcinogen just like asbestos.

23 Now, in medicine, it is not mainstream to
24 believe that any one agent -- only one agent can cause a
25 disease. A malignancy can arise in any tissue in the

1 human body, and it doesn't necessarily have to be
2 associated with any particular agent. This is
3 mainstream medicine.

4 Now, one of the big arguments against asbestos
5 being the only cause of mesothelioma is mesotheliomas
6 occur in children without the latency period sufficient
7 to develop from an asbestos exposure. And these
8 childhood mesotheliomas that are very rare but are very
9 well known to happen. So there's no single known cause.
10 And although people agree that the predominant cause of
11 mesothelioma in the United States is asbestos exposure,
12 it's not really known that it is. Some people believe
13 it, but it's never been shown to be the case.

14 Now -- now, can we go back to the Slide 6. Now
15 the next one.

16 Okay. The air samples for -- for the duration
17 of the ride, thereby averaging over the possible spots
18 where asbestos exposure were high, the average exposures
19 important in the risk assessment, you need the average
20 cumulative exposure. The peaks and valleys will be
21 higher and lower, but you want to see the average
22 exposure. So we tried to collect the samples over a
23 large portion of the ride so we would characterize all
24 of the exposure.

25 Next slide.

1 None of the IERF air samples collected exceeded
2 the current U.S. Occupational Safety Administration
3 standard permissible exposure limit, which is .1 fibers
4 per milliliter. That was important to us that we not
5 exceed the asbestos standard when we collected these
6 samples because we don't want to expose people above the
7 asbestos PEL. Now, it's -- I disagree with the earlier
8 people. I believe this is -- all of our risk assessment
9 data is derived from these kinds of studies that were
10 done using these exposure levels. And I believe that
11 the OSHA standard is designed to be protective of people
12 who are exposed to asbestos. How protective it is is
13 argued by different people. I can tell you that this
14 asbestos standard is the strictest asbestos standard in
15 the world. Everybody who produces asbestos has an
16 exposure standard higher than this.

17 Now, these are the results of our asbestos
18 exposures. The lead rider in our experiment had .1 --
19 0.15 fibers per milliliter and the trailing rider had
20 0.11, and the average is .013. So our study's the only
21 study where the trailing worker -- or the trailing rider
22 did not have a higher exposure. And we considered this
23 to be an important observation that the trailing rider
24 need not have a higher exposure, and that's because I
25 don't think much dust is being generated by the lead

1 rider that the trailing rider is picking up. This could
2 be because of the distance between them; it also could
3 be because of the weather conditions, or it could be
4 because of both. It's fairly widely accepted that wet
5 conditions reduce dust exposure. That's kind of a
6 mainstream thing. All mining operations wet the roads
7 to reduce the dust. So that, again, is something that
8 in the early EPA study is really not mainstream.
9 Moisture conditions reduce dust, and this is widely
10 accepted.

11 Then we have a hiker, who's about .001. That's
12 the person you saw walking around. This area sample was
13 a stationary sample, and this is background. So, you
14 see, the background sample's about an order of magnitude
15 lower than the people who are riding the motorcycles.
16 And normally in an asbestos environment where you use
17 the .1 PEL, you don't operate at the PEL; you're always
18 less than it. And you're always trying to be about an
19 order of magnitude less the PEL. And that's kind of
20 where we were on the days that we were riding at Clear
21 Creek.

22 Go to the next slide.

23 Now, they give these measurements a little
24 texture, as they say, on the intelligence business. We
25 compared them to what is the occupational exposure

1 level, which is staying below .1 for eight hours a day,
2 however weeks you work a year, times 40 years. So the
3 people who ride at Clear Creek are going to be
4 substantially below any occupational exposure to
5 asbestos by something maybe on the order of 40 or 50.
6 Then you have the Russian Federation, which is one of
7 the largest producers of asbestos in the world, and they
8 operate with an environmental exposure standard of .06,
9 and they use the same greater-than-5-micron fiber type.
10 And this is 24 hours a day. It's supposed to be
11 protective for a lifetime. Now, I've been in this
12 facility and I've measured the ambient air. The ambient
13 air is actually closer to .01. It's very similar to
14 what the riding at Clear Creek is. Now, this is a large
15 community with over 100,000 people. This -- they've
16 been mining there since the 1880s. And they have 3 to
17 4,000 asbestos workers and miners in that general
18 population, and they have very few mesotheliomas. I've
19 had a difficult time convincing myself that the
20 mesotheliomas and asbestosity are above background.

21 So this -- and then I looked -- and we looked at
22 the World Health Organization. The background levels of
23 asbestos of the world is .001 to .01. So you're
24 somewhere a little above the high end of background when
25 you're riding a motorcycle on the conditions that we

1 had.

2 Now, keep in mind that asbestos has been found
3 in the ice cores of Antarctica and Arctica. And they've
4 drilled the ice cores down below the modern Industrial
5 Age. So before we actually started the mine asbestos in
6 the 1880s and 1890s, it was already in both of the ice
7 caps in both hemispheres. So there's always been
8 ambient air containing asbestos. All of us are exposed
9 to it. Matter of fact, one of my colleagues, Nori
10 Koliama (phonetic), has studied a volcanic island off
11 the east coast of Japan, and on that island they find
12 chrysolite in the geology they should not because it's a
13 volcanic island. And they believe that it blows out of
14 the serpentine deposits in California, goes across the
15 Pacific, and it settles on this island. So you want to
16 begin to realize you're looking a little bit at
17 background, how much it's elevated, and where you fall
18 in this game.

19 Go to the next one.

20 The conditions for motorcycle riding at CCMA,
21 the previous studies appear to have been drier and no
22 mention's made of efforts to ride in such a way to
23 minimize the dust exposure. Now, Dr. Cooper thought
24 that his exposures were a maximum because of the dry
25 conditions and because of the activity that they were

1 doing. Now, the EPA doesn't seem to think that the dry
2 conditions are an important observation in this.

3 Next slide, please.

4 The importance of moisture conditions, terrain
5 location, geological outcropping, riding practices are
6 probably key factors to decreasing the airborne asbestos
7 that were responsible for the low levels that we saw.
8 Now, we didn't plan on going a couple of days after it
9 rained or something. We set a day on the calendar and
10 when that day came, we happened to be there. And those
11 were the conditions that we found.

12 Now, this starts Dr. Wilson's part of the story.
13 We're going to look for people who are riding five days
14 for eight hours per day for one year. We're assuming
15 asbestos exposures of this -- we averaged the asbestos
16 exposure from .013 to what it is over a year. And you
17 can see that over a year it's much below the background
18 level of .0001 that the World Health Organization said
19 would be background. And the average asbestos-related
20 cancer, Dr. Wilson will talk about that with you.

21 Thank you for your attention.

22 (Applause.)

23 DR. RICHARD WILSON: Thank you. Thank you for
24 coming to listen -- to the Board, and thank you, Daphne,
25 for inviting me to come. They invited me

1 (unintelligible).

2 I want to first say who I am, Richard Wilson.
3 I'm not quite 85, will be this month. I've been
4 involved with risk analysis since 1972. I have
5 testified on risk analysis in both the House of
6 Representatives and the Senate hearings and, in fact, in
7 the Legislature of California. I have lectured in 40
8 countries on risk analysis including three -- I can't
9 remember if I was invited by Cal-EPA or the other one,
10 but basically the groups in (unintelligible) -- invited
11 lectures, by the way.

12 Last week I was helping open the short cause of
13 risk assessment radio carbon, which I instituted 40, 30
14 years ago. And that was -- we had an audience of about
15 80 people, of whom I think half a dozen were from the
16 EPA. So I think -- that's my expertise. So someone
17 said I don't know much about risk analysis, I wish -- I
18 certainly know that is true; I wish I knew a hell of a
19 lot more.

20 So what is the crucial thing about risk
21 assessment is what is the question you're asking. I had
22 to say that right at the beginning because unless you
23 ask -- know what the question is you're asking, your
24 chance of getting a sensible answer is very much
25 reduced. And the question we were asked is essentially

1 the one that Daphne said, Is there a period of time, are
2 there occasions when you can get the motorcycle riding
3 and -- in Clear Creek and do it without real hazard?
4 And so that is the question we were asking, and we
5 addressed as a preliminary one because, of course, we
6 went there for two days.

7 Now, as a risk assessor, I never, in fact, do a
8 risk analysis if I can help it unless I'm actually able
9 to go to the place and see the people take data and
10 understand how it's taken. And that, I think, is very
11 important because now you have a certain amount of
12 trust. I first saw the risk analysis, and I agree with
13 Dr. Cooper, which, in fact, was one of the best
14 people -- I read his study in 1980 or so. And at that
15 time I thought why should anyone want to do trail-bike
16 riding? And I don't do trail-bike riding. I was left
17 on a motorcycle 62 years ago -- and that's another
18 story.

19 And so how -- the question now, we've got those
20 numbers. What do you do with them? And we can go over
21 in detail of whether you believe this or that or the
22 other. And it's usual now to take a summary of somebody
23 else's study, and we take the EPA study.

24 Now, we did -- we went a little further than
25 IRIS. IRIS is a summary of the EPA study. Because if

1 you look at the IRIS study for asbestos, you find it is
2 based on a complete report a year earlier on, of course,
3 Health Effects Update. I happen to know who basically
4 wrote that. It was a man called William Nicholson. And
5 he gets a set of tables informally by which you go
6 through it all. So we can take the age distribution and
7 take age up to start of exposure, and so on. So that is
8 what we did -- what I did. And then you ask yourself --
9 well, we could do much more. It's a question of who's
10 going to ask the question, and we'll see what
11 (unintelligible).

12 Here we asked ourselves, then, look at that data
13 and look at the Health Effects Update. So we assume
14 that the assumptions made in that 1975 update -- or 1985
15 update are correct. Although in 2003, the EPA did
16 summon another group to have a look at that, see if they
17 can improve it, and then their own consultant said those
18 are overly pessimistic. But we're not going to do that.
19 We've taken the one which is in there and used that.

20 So eventually looked at this number. If we take
21 the assumption, which we can take by discussion with the
22 motorcycle riders, how often will someone go to Clear
23 Creek? And we took a number which seemed reasonable,
24 that they're going to be there for six -- five days in
25 the year, and that they'll probably do that -- five days

1 in the year, and we presumed they were going to be there
2 the amount of time typical of the rides we were taking.
3 Having done that, we then said that this is this
4 particular period, and then go through the numbers which
5 was the EPA Health Effects Update. I took -- I think it
6 was a 13-year-old person taking this update and the
7 combination of mesothelioma and lung cancer. And the
8 numbers are in there. And we work out the possibly risk
9 of it. And here is the number on the bottom. CCMA
10 motorcycle rider, the percentage of deaths of a person
11 would get from actually being in this ride. Now, of
12 course, you might die from mesothelioma from other
13 reasons. Now, again, I don't think there's any real
14 strong evidence that only asbestos causes mesothelioma
15 because that would be the only cancer in the world which
16 is only caused by one source. So it's very unlikely to
17 me. So we take deaths due to mesothelioma are at .11
18 percent. That's not historical data. And we're just
19 adding a small amount. Now, we said even a small amount
20 matters, but that variation of .11 percent is very
21 (unintelligible) of the country. And so this is within
22 the uncertainties of what we're talking about.

23 So then said, having said that, we then go
24 back -- and, by the way, we didn't put this in the
25 report, but if we take the 30-year-old, you can go

1 back -- you can ask a slightly different question.
2 Suppose you had a 14-year-old, well, that's --
3 (unintelligible) -- that goes up to twice the amount.
4 If you're a 40-year-old, it approximately drops in two.
5 If you're an 85-year-old, it vanishes completely.
6 Because if I developed cancer right now, it will be --
7 the latent period would be such, I'd be 105 before it
8 actually appears, and it's the least of my problems.

9 So now we go on to the next one, please.

10 So this is a -- now, when you do a risk
11 analysis, then you want to say -- all sorts of things
12 you can do. Let's simplify. The one in a million
13 lifetime risk is typical -- is what the EPA, for
14 example, started doing in 1975 and before. So this
15 is -- what happens in life -- if you're just living
16 for -- 70 years old in a bar, for 15 years you only
17 accumulate that one in a million risk. If you're just
18 around the place, you might drown or you might fall in
19 the lake or something like that. Nineteen days of
20 living will do that. This is historical data. Fire,
21 well, fires going on all the time. Firearms is
22 extraordinary. I mean someone might shoot you. Three
23 days of living gives you that. Electrocution is not so
24 bad. Electrocution is not so common. Tornados are
25 quite common, we know, in the East quite a lot recently

1 Floods, of course, are not -- and even driving a 100
2 miles from here to Clear Creek gives you that risk.
3 That's just historical data.

4 Now, the next one, we talk about cancer risks.
5 Now, one thing about cancer, it's very important to
6 understand that the cancer risk, there is no one that
7 you really know this person has got cancer and it was
8 caused by this thing. The cancer risk -- once one knows
9 one's well below what we call the acute risk, which is
10 something which might give you asbestosis or those
11 things, that's well -- that used to be 50 fibers per
12 milliliter; that's huge. If you're well below that and
13 you're talking about a long-term issue, cancer, all the
14 cancer models that anyone believes had inherently in
15 them before -- it is the long-term average which
16 matters. That's inherent in the cancer models, and,
17 therefore, should be inherent in the treatment. And,
18 remember, that is a model. It's not demonstrated proof.

19 So we give a lot of attention in cancer
20 modeling. The first one we have is -- I can't even read
21 it now. I'm sorry. I hope someone can read it. Yes,
22 here we are. Smoking two cigarettes in a lifetime is
23 equal to the cancer risk that the EPA don't like. Okay?
24 That's two cigarettes in a lifetime; it's not a big
25 number. I think I smoked two cigarettes. Drinking diet

1 sodas with saccharin in them, that was a very -- you
2 don't have saccharin any longer, but that was really
3 quite nasty. Thirty diet sodas would do that. The
4 other one, drinking 70 pints of beer. How many
5 (unintelligible). And now we've made it a point of
6 death because cancer risk of alcohol -- alcohol? Does
7 anyone know? Alcohol is a Class I carcinogen, according
8 to the International Agency for Cervical Cancer. There's
9 no doubt it causes cancer -- can cause -- lip cancer in
10 people. It certainly causes cancer in animal studies.
11 And I testified on this in Sacramento at the EPA hearing
12 sometime ago, and I'm glad to say proxy for the Cal-EPA
13 lady, Melanie Martin, politely drove me out; otherwise,
14 I was doing it on my own expense, of course. So there's
15 a quarter of a typical diagnostic x-ray.

16 So these are cancer risks which must be
17 comparable -- compared with the sort of cancer risks I'm
18 talking about, the EPA is talking about.

19 Next one.

20 Here, for example, on recreational risks. We're
21 talking about a recreation it's well known -- well,
22 firstly, OSHA is -- whatever standard they have, it's an
23 occupational standard. It's well known that society
24 allows -- expects people in an occupation to have a
25 higher risk than you ask in the general public to

1 accept, largely because the general public have all
2 sorts of things, and an occupational person will likely
3 risk to only item.

4 THE REPORTER: I'm sorry. Could you please
5 speak into the microphone.

6 DR. RICHARD WILSON: Pardon?

7 THE REPORTER: Could you make sure you speak
8 into the microphone.

9 DEPUTY DIR. GREENE: She's trying to hear you,
10 Robert. So she's trying to take dictation.

11 DR. RICHARD WILSON: I'm sorry.

12 DEPUTY DIR. GREENE: I'm sorry, Dick. She can't
13 hear you.

14 DR. RICHARD WILSON: The occupational risks
15 is -- society in general is willing to accept that in an
16 occupation you allowed to, say, perhaps 10 to 100 times
17 as much risk as you would ask the general public. And
18 that is what the OSHA risks, of course, are based on.
19 However, it's also true, and that is that it's very,
20 very clear, a lot of studies, that people are willing to
21 accept risks which are done voluntarily much more
22 willingly than some risk which is imposed on them from
23 outside.

24 So that is why when one looks at a question of
25 recreational risks -- and, indeed, some recreations are

1 quite dangerous. You have the list thesis, by the way,
2 annual risk, this one (unintelligible). This is
3 historical data. Hiking, people do collapse on hiking.
4 We had a Berkeley student who was -- he just collapsed
5 at the end of a long hike and, actually, in Switzerland
6 and died. There was -- then we have various things,
7 snow boarding and there was mountain climbing. The
8 interesting thing, if you're a professional mountain
9 climber, you're much more likely to die than if you're a
10 casual mountain climber because you do more dangerous
11 things. Of course, you've particularly got the
12 Himalayas that are sort of very, very high, that one
13 area. People sort of collapse and die from climbing the
14 Himalayas. That's clearly a voluntary activity. I
15 can't -- don't know of anybody who's been compelled to
16 climb them.

17 White-water boating, of course, quite high. And
18 then we get SCUBA diving. Sky diving, I know people who
19 have done sky diving. There are quite a lot of those.
20 And swimming is quite remarkable because -- of course, a
21 lot of people die of a heart attack while swimming. And
22 there are the bottom is this particular one year of
23 motorcycle riding at CCMA is now at .2, lower than
24 these. And that's motorcycle riding, remember,
25 restricted to the type of period we're actually testing.

1 And the question is did we test enough? Did we
2 measure -- was it measured right? And that was the
3 question -- I saw them being done. By the way, the
4 hiker, I hiked more than that hiker, but there weren't
5 enough gadgets for me to hang one on. And I was
6 there (unintelligible).

7 So I think that's the end -- is there one more?
8 I think that's the end of my -- of my comments. And so
9 the question one has, I think we have demonstrated
10 unequivocally that there exists occasions which you'd be
11 quite safe, very safe for people to be at Clear Creek.
12 Whether those occasions are so isolated that they're not
13 worthwhile is another question. What the management
14 issues is another question. Whether you're to worry
15 about it, whether you re-open Clear Creek, that's not my
16 question. That's not my decision. Whether the Bureau
17 of Land Management wants to keep it open or close it
18 completely, hand the money back to the person for which
19 he's short of cash, that's another question. The
20 question we have is answering the question that Daphne
21 Greene asked us, is there an occasion which we can
22 safely ride at Clear Creek, and what are the occasions?
23 And my guess is this particular period, we might be able
24 to identify a period. We must -- mustn't be so dry that
25 it's there. And we clearly keep it closed off in May,

1 June, July or August, maybe another month, maybe
2 specific days. I don't know. That's a management
3 question which we did not address.

4 Thank you.

5 CHAIR WILLARD: Thank you, Dr. Nolan and
6 Dr. Wilson. Very interesting report.

7 I think now is a good time to have our Q/A
8 period. And as I said, we're going to try do something
9 a little different and give the public an opportunity to
10 ask both sets of experts questions, and then also the
11 Commission will be asking questions as well.

12 If I could please ask you to take a seat up here
13 at the table. We have some hand mikes, and it might be
14 better for somebody to take a seat at the table, if you
15 would, please. And that way we can just have you answer
16 from the table with the hand mikes.

17 DEPUTY DIR. GREENE: Can somebody in the back
18 please turn on the...

19 CHAIR WILLARD: Get the lights back up, please.
20 Thank you.

21 Do you guys have any questions?

22 COMMISSIONER KERR: Would you mind if I start to
23 go with some quick questions while you're going over
24 that stuff or --

25 CHAIR WILLARD: Commission Kerr, go right ahead.

1 You can be first.

2 COMMISSIONER KERR: So you had a slide up there
3 about relative risks, you know, climbing the Himalayas
4 and various other activities. So I guess I always
5 thought motorcycle riding itself was somewhat risky
6 relative to some of the other activities you had listed
7 on the chart. So isn't there a risk associated with the
8 act of riding a motorcycle that would be a couple --
9 several orders of magnitude higher than the one you
10 quoted for the asbestos inhalation?

11 DR. RICHARD WILSON: Yes. I'm almost sure there
12 is. And I'll give you one piece of personal experience.
13 Three months after I got my driving license for a
14 motorcycle, I was riding along a dark road. A car came
15 out without lights, crossed the road in front of me, and
16 I went straight into it. You see this little scar on my
17 right-hand side was the door handle of that car. And I
18 was rather lucky. I got a concussion, and the next day
19 I applied for my first job which I got. So whether or
20 not I got it because of sympathy, because of my
21 accident, or without, or I was just lucky. I don't
22 know. But there's no doubt whatsoever that motorcycle
23 riding can be dangerous. And the question is -- the
24 issue was, that we were asked, is it dangerous because
25 of these hazards -- because of this thing. And so I

1 would think anyone who wants to be a trail-bike rider
2 must be well aware of the actual hazards of riding a
3 trail bike.

4 COMMISSIONER KERR: Okay.

5 CHAIR WILLARD: Great.

6 Commissioners, anyone else have --

7 Commissioner Van Velsor.

8 COMMISSIONER VAN VELSOR: Thank you for your
9 presentations, folks. I thought those were very
10 enlightening.

11 I'm curious, one of the components that the EPA
12 mentioned in the study was the fact that there are
13 significant risks from asbestos exposure that are not
14 measurable. And what worries me to some extent,
15 especially as it relates to children, we do know, I
16 think, that the physiological systems in children are
17 different than adults. I'm curious if that was also
18 recognized in your analysis. In other words, did you
19 recognize that children breathe at a faster rate than
20 adults so they're probably in-taking more than an adult?
21 Their organ systems are not developed. Were those
22 assessed in your studies as well?

23 DR. DANIEL STRALKA: Yes, Commissioner. So we
24 did look at -- we did take into account the child's
25 scenario, the increased rate of breathing and the

1 proportion of the body weight as well and the lighter
2 body. We aren't especially taking into account organ
3 development, the extent of the organ development. I'm
4 sorry. So we didn't take into account any specifics of
5 the organ development other than just the size and the
6 amount of air that they would be breathing.

7 COMMISSIONER VAN VELSOR: Okay. Thanks.

8 CHAIR WILLARD: I have a question for both BLM
9 and EPA. I've heard it said that the EPA is BLM's
10 regulatory agency. And I'd just like to find out if
11 that's true or what the relationship is between BLM and
12 the final decision-making process. Do you take your
13 marching orders from -- does the BLM take its marching
14 orders from EPA relative to risk assessment for the EIS,
15 or how does that work?

16 RICK COOPER: No, we don't take marching orders
17 from the EPA. They are, effectively, a science agency
18 within the federal government. And it is an opportunity
19 for us to use their science through a cooperative
20 agreement that we have with them, a cooperating agency,
21 to fill a niche of where we don't have the level of
22 scientists that they have in our organization. We
23 contracted it out in 1992. At this time around, we felt
24 it was important to go ahead and see if we could get a
25 cooperating agency agreement and have them work with us

1 on this particular study. So...

2 CHAIR WILLARD: Okay.

3 Commissioner Slavik.

4 COMMISSIONER SLAVIK: Let me try this -- try and
5 explain my thought pattern on this. The EPA -- and I
6 certainly appreciate the EPA's charge to protect us from
7 all kinds of different things. There is -- right now
8 we're looking at a very -- on one end of the spectrum of
9 health risks a very minute possibility that people could
10 get -- risk -- increased risk of cancer and possibly die
11 of this, et cetera, et cetera. We've talked about that
12 for -- you know, you've produced thousands of pages,
13 basically, of literature on that. On the other side of
14 that spectrum is the benefit from this activity to
15 society. And what I'm talking about is kids out of the
16 television arena, the computers, all these things that
17 are happening in our society today. There's --
18 California spends a lot of time promoting outdoor
19 recreation. This is an outdoor recreation. This is an
20 opportunity for families to recreate together, to learn
21 things, to -- in other words, there's two -- there's a
22 balancing act here between the possibility -- a minute
23 possibility of getting some kind of a cancer or possibly
24 getting hurt falling off a motorcycle as opposed to
25 another benefit to society of improving relationships

1 between families, character building, and all these
2 kinds of things.

3 Have you ever looked at the difference between
4 these two opposite ends of the spectrum, and included in
5 that I would say the BLM would maybe be somebody that
6 would certainly be an agency that would -- because of
7 your charge, you need to look at both ends of that
8 spectrum. I wonder if I can get comment on that from
9 both of you, the EPA or the BLM.

10 JERE JOHNSON: You know, the things you
11 mentioned about spending time with your family and
12 building with your family are certainly very worthy and
13 good things. I mean I tried to do it with my kids when
14 they were growing up. There are other places I would
15 think personally that you could take your children to
16 have that kind of activity other than taking them to a
17 place where they're going to be exposed to levels of a
18 known human carcinogen that could down the road cause
19 severe health effects.

20 I mean the levels we looked at -- one of the
21 reasons -- if you look at our -- the top of Acceptable
22 Risk Model, which is 1 in 10,000 cancers -- excess
23 lifetime cancers, the reason that still may seem like an
24 impossibly low number to people, but you have to
25 remember that in the course of our lives, we're exposed

1 to different chemicals, different compounds all the
2 time. We try to keep the exposure to each one of those
3 relatively low because cumulatively they -- you know,
4 you're being exposed to stuff all the time that could
5 have a negative impact on your health.

6 For this, if you look at some of our health
7 numbers, we're not talking one in a million here. We're
8 talking one in the thousands or -- at the high level I
9 think it was two in a hundred for excess cancer risks.
10 So no, we did not look at the benefit to a family or
11 recreating at CCMA. I would certainly think that would
12 be beneficial. But I would also maintain that there are
13 a lot of other places you could go to do that where it
14 would be a lot safer.

15 RICK COOPER: As far as the Bureau's
16 perspective, we are a multiple-use agency. We do look
17 at spectrum of recreational opportunities on the public
18 lands.

19 The immediate closure that we did was in
20 response to the very high numbers that we saw. But we
21 have gone through a three-year planning effort. We are
22 evaluating and looking at what opportunities could be
23 available, what scenarios we can come up with in terms
24 of adjusting times, of people could be in the area while
25 recreating. So we are evaluating that through this

1 land-use process. We're at it right now and working
2 toward, you know, final decisions for the area.

3 CHAIR WILLARD: Commissioner Silverberg.

4 COMMISSIONER SILVERBERG: Thank you, guys, for
5 being here today to field these questions.

6 And it seems to me that the reason we're all
7 here today is there seems to be -- the question at hand
8 seems like, from these two different studies, comes down
9 to which samples have the most merit, and, therefore,
10 you can extrapolate the risk of the Risk Assessment.

11 So in looking at these two different reports
12 that have been presented today, they're greatly
13 different. I think we can all agree on that. So I
14 guess I'm just trying to think about this rationally.
15 If we back out the samples that were taken by the EPA
16 during the time of season that is not -- I guess, what
17 was it, about 2005 or '06 when the seasonal closure was
18 done. Is that right?

19 RICK COOPER: 2005.

20 COMMISSIONER SILVERBERG: 2005. Okay. So from
21 2005 forward, if we looked at the samples that were done
22 during the, quote/unquote, wet season and also looked to
23 have samples that were representative of actual
24 recreation activities done by the riders such as -- I
25 believe it's a practice of riders not to attempt to ride

1 in each other's dust, and so some spacing was done in
2 the most recent report that seemed reasonable. The
3 weather conditions obviously seemed to play a role in --
4 sounds like it's generally assumed that moisture in the
5 ground does have some kind of prohibitive effect on
6 dust. So it seems like the crux of this whole meeting
7 is about these samples. And how -- with you five
8 sitting up there, how can we better understand and get
9 something positive today going forward with the samples
10 at hand and how to resolve the issue of, you know, is it
11 safe to be at Clear Creek right now?

12 JERE JOHNSON: We, actually, did an analysis
13 where we took out all the September samples and looked
14 at just the November samples and the February samples
15 and tried to see if there was a significant decrease in
16 the concentrations we were finding. And the fact of the
17 matter was there wasn't.

18 The November samples were actually closer to the
19 September dry samples than the February samples when it
20 was wet. And, frankly, that surprised us. When we got
21 that, it was not what we were expecting when we got the
22 data back. We thought, you know, the weather or the
23 damper it is, you're going to get a corresponding
24 reduction in exposures. And, in fact, that didn't
25 happen. And we think one reason it didn't happen was

1 because of the nature of the serpentine deposit, this
2 soil out at Clear Creek, like I mentioned during my
3 presentation. That stuff dries out really fast. I mean
4 there's no organic matter on the top of those barrens to
5 hold the water, and it goes right down. So we looked at
6 that because we thought, well, that was okay. You know,
7 you can have this summer closure and allow riding during
8 the wet months. But when we looked at the actual data,
9 it didn't lead us to that conclusion. Again, the only
10 time we actually got a reduction was when it was
11 actively raining. And if we compare our February wet
12 meteorological stuff with what -- the other -- the Cal
13 Parks Group found, our exposure levels were fairly
14 comparable. So, again, it has to be really wet, it has
15 to have rained, you know, during that time or
16 immediately ahead of it before we saw any reduction.

17 COMMISSIONER SILVERBERG: So are you saying that
18 even in the wet season the risk is still greater than
19 the 1 in 10,000?

20 JERE JOHNSON: Yeah.

21 COMMISSIONER SILVERBERG: So how do you expect
22 us to interpret the new study that was just done
23 today -- or that we just are learning about today
24 through the IERF that the samples indicate a very
25 different result?

1 JERE JOHNSON: Well, there's a difference
2 between the samples and the Risk Assessment that was
3 done on the samples. If you look at their actual
4 exposure levels that they measured, they were kind of
5 very similar to what we measured in those February wet
6 season exposure levels. It's what they did with those
7 levels in terms of the risk assessment that's different
8 from ours. And I think we're going to provide comments
9 to BLM on the IERF report. And I think when you read
10 our comments, you'll be able to learn more about our
11 orientation there.

12 You know, the other thing to remember is I think
13 you guys did the Risk Assessment based on five days in a
14 year and then never going back to CCMA. Right?

15 DR. RICHARD WILSON: The five-day -- the Risk
16 Assessment was for roughly -- we consulted with -- of
17 course, with the experts, the people who were doing the
18 riding. That's why we said five days in the year. And
19 we said that's in the year -- that risk of .2 -- .2 in a
20 million is for one year. And if they go back another
21 year, we can't -- we could answer that question, but we
22 didn't do it. If the board asked us to do it, I'll go
23 back to the -- the Health Effects Update tables and give
24 them the answer.

25 CHAIR WILLARD: So, then, is it cumulative? If

1 you go ten years, is it ten times .2 or 2?

2 DR. RICHARD WILSON: Well, it's not quite. As I
3 said, that number was .2 for a person who's 30 years
4 old. And if it's a man who's 40 years old, it goes
5 down. It's not less than that. For a young man who is
6 14, it's approximately double. So you have to go
7 specifically and ask yourself what ages you're talking
8 about. If you say someone starts early at the age of 10
9 and goes on to the age of 50, that's a very specific
10 question, and we can answer that with the Health Effects
11 Update of EPA. And, of course, that's right there in
12 Nicholson's report.

13 DR. DANIEL STRALKA: I just wanted to answer the
14 question about the confusion of the samples.

15 So I guess I'm looking at it as all this data is
16 consistent and it was all collected in a similar manner.
17 You know, air-breathing apparatuses were -- you know,
18 air samplers on riders doing activities, doing the
19 activities that we were talking about in our study. We
20 did quite a few more activities trying to answer the
21 question of what BLM and -- how it used the property
22 from their observations and their surveys of how people
23 are actually using the property. If you look at what
24 Cooper did originally on the riders and how they were
25 riding, what was going on with the riding events -- what

1 we tried to do is we also used the BLM surveys on how
2 people were riding. We asked questions from the
3 Ramblers about how they ride. Was this consistent with
4 their techniques on how you would see people riding. We
5 didn't limit our riders to a certain distance other than
6 to be safe, you know, going in one direction and keeping
7 the same order. That was our only limitations.

8 But, basically, all the data suggests that yes,
9 in the dry season, there's a significant amount of dust
10 and in that dust there's a significant amount of
11 asbestos kicked up. But what we had hoped to do in our
12 study of looking was to try to define what in -- under
13 what conditions in which the dust was low enough or
14 sufficiently low such that you could still ride and do
15 these activities and not produce significant exposure.

16 And as Jere was saying, in our study, even in
17 the -- what we were calling the moist season, it was
18 during the winter, during the rainy season but it hadn't
19 rained for five days previous. So it had rained in the
20 rainy season. It was during the rainy season, but it
21 hadn't rained immediately before the sampling. In our
22 wet sample, and very much in the IERF samples, it had
23 rained within 24 hours or -- between the samples. And
24 so under those conditions, we saw a decrease in dust
25 exposure and a consequent decrease in the asbestos

1 exposure. What we were saying is that in both studies,
2 even under those conditions, there is still a
3 significant amount of exposure that happens even in that
4 wet season.

5 COMMISSIONER SILVERBERG: So I'm a simple man,
6 and now I feel like I really don't understand what's
7 happening. Because on one account you're saying that
8 your results are very similar to the new study; they
9 just did a different risk analysis. Is that what I
10 understand? Do I have that right?

11 DR. DANIEL STRALKA: Right.

12 COMMISSIONER SILVERBERG: Okay. Extrapolating
13 on that, if I could ask Dr. Nolan, is it also your
14 opinion that it is just a matter of the risk analysis
15 that you did in your report that really differentiates
16 the two reports?

17 DR. ROBERT NOLAN: No. You know, to come up
18 with .2 asbestos-related cancer deaths per million, and
19 their high level is two in a hundred, that's quite a
20 difference.

21 Now, there is no chrysotile exposed asbestos
22 cohort, I think, in the world that has a 2 percent
23 mesothelioma mortality. That's --

24 Well, you said, two per hundred.

25 MS. JOHNSON: (Unintelligible.)

1 CHAIR WILLARD: Please use the mike so we can
2 hear your reply. I want to hear this.

3 JERE JOHNSON: The other thing -- you know,
4 unfortunately some of this is getting into asbestos
5 weeds, and we can be here for days.

6 We looked at -- you have to remember that even
7 with asbestos exposure, mesothelioma is a very rare
8 cancer. So what you're going to have, you can say
9 you've got so much meso, that's fine. But you're going
10 to have lung cancer before you have mesothelioma. And
11 you're going to have non-cancer health effects before
12 you're going to have lung cancer. So you can say --
13 when we said that the cancer -- excess lifetime cancer
14 risk was as high -- at the very high end using the OEHHA
15 model -- the state model of like one or two in a
16 hundred, we're talking about lung cancer and
17 mesothelioma. We're not just talking about
18 mesothelioma. So we're not exactly comparing apples and
19 apples here.

20 And the other thing is, again, you can't use the
21 OSHA standard to run your analysis because the OSHA
22 standard is a regulatory standard that was established
23 to try to provide protection while still having a
24 reasonable way to monitor. It's not health protective
25 and it's not health based. So instead we would use the

1 Nicholson model, which is our EPA's model and the model
2 of the Office of Environmental Health Hazard Assessment.

3 DR. ROBERT NOLAN: Let me just go back to the
4 asbestosis deaths. In the PTI report in 1992, they said
5 they didn't calculate asbestosis deaths because they
6 said the exposures at Clear Creek were too low to cause
7 asbestosis. Asbestosis is a disease that generally is
8 associated with high asbestos exposure. It's not
9 something that you would get from an intermittent
10 exposure like this. I mean you have to have a fairly
11 significant exposure.

12 Now, one of the things that I'm looking at, the
13 EPA model is -- the EPA is using a model. Then I'm
14 going back and I'm looking at the people occupationally
15 exposed to asbestos. Like, for example, mesothelioma
16 among certain occupational exposed cohorts is not a rare
17 disease. The insulation workers we studied at Mt. Sinai
18 have up to 8, 9 percent mesothelioma deaths. I would
19 not consider 8 deaths in 100 to be unusual. But the
20 exposures here would be significantly lower. And you're
21 looking at the occupational cohorts to get some idea
22 about what the model is telling you. The model should
23 be telling you something that is somewhat consistent
24 with what we know about the epidemiological studies that
25 are used to create the model. For example, the model

1 says that mesothelioma deaths go up all the time.
2 There's some reason to believe that they go for a
3 maximum and then eventually come back down just like
4 trees don't grow to the sky. But if you plug the model
5 in, as time goes on, it just goes up and up and up and
6 up. But if you actually begin to look at the older
7 people exposed to chrysolite in Australia, you begin to
8 see that it comes down a little bit. Now, that may be
9 due to fiber clearance. It may be due to some other
10 aspect. But the -- you know, I'm not -- we did not
11 consider asbestosis deaths. And EPA's been working on
12 an asbestosis model for at least seven years, and we
13 still don't have any information on it. So we used the
14 1986 model, and we limited our discussion to the
15 asbestos-related cancer deaths.

16 Generally, the first asbestos-related disease
17 that was identified was asbestosis. And as they began
18 to reduce the exposures, they began to notice lung
19 cancer risks, and then they began to notice mesothelioma
20 at even lower exposures. So it's widely accepted that
21 the lowest amphibole exposures are the cause of
22 mesothelioma. And although you -- you know, I think
23 it's important to look at the OSHA standard because
24 that's the standard that you're supposed to believe.
25 You may not believe it to be health related. I think it

1 is, and I think it is protective. It's got to be
2 protective over having higher exposures.

3 JERE JOHNSON: Well, of course it is. But it's
4 10 to the minus 3 cancer risk. And if you consider that
5 health protective, then that's the reason we're having
6 this discussion. We're on different plains.

7 DR. RICHARD WILSON: I was going to say, if I
8 could -- having done the Risk Assessment for Bob, why we
9 did things -- I happen to know and argued with William
10 Nicholson way back in the early 1980s. And the
11 important feature is that -- the reason we took that,
12 not just because I necessarily believe it, but we wanted
13 to avoid the interminable arguments, which I'm involved
14 in strongly with Bob Nolan about this and that or the
15 other, and with other people. You can go on for months
16 on that argument. Is that something which is written
17 down (unintelligible) thing, and back in the 1970s --
18 1985, the Health Effects Update, which was the EPA
19 report based on Nicholson's calculations were -- in fact,
20 we could -- we could put that to work. IRIS, as I said,
21 is a simplified version of that. It's explicitly based
22 on that. And so then you ask yourself can you do better
23 than what Nicholson -- of course, you can argue that now
24 since 1986. And in 2003, EPA attempted an update. That
25 was the place where they were going. And all cancer

1 things -- and I don't think asbestos cancer is
2 different -- the strongly accumulated effects, which are
3 things like asbestosis, they've got high levels,
4 55 per milliliter. Those are -- we're way below those.
5 So if there's any rush (unintelligible) long-term
6 effects, the long-term effects, Dr. Nicholson pointed
7 out is, in fact, cancer. And then you drew the general
8 cancer modeling which is common to all cancers. It may
9 not be right, but it's in all of the theories -- the
10 theories which inherently suggest there's no threshold
11 are the theories which indeed say that average is right.

12 Now, Nicholson took two separate models: One
13 for lung cancer and one for mesothelioma. The lung
14 cancer had a latent period -- now, you'll notice, if you
15 look at those tables, that, in fact, a childhood
16 exposure to Dr. Nicholson's model would not cause very
17 much lung cancer at (unintelligible) the age, but
18 mesothelioma will. That's the same model based on --
19 based on the fact of, actually, Julian Peters' model
20 from England. Now, whether that's right or wrong is not
21 the point. We can argue it. This was, in fact, being
22 re-discussed in the 2003 Health Effect Update. And
23 those -- at that time, there was no other cancer that
24 had been discussed until the long-term health model.
25 But that was the place it should have been discussed.

1 As I say, the numbers were coming out of that were being
2 discussed with that were lower than what Nicholson had
3 in 19- -- in the 1985 Health Effects Update.

4 Nonetheless, we took the 1985 Health Effects Update
5 because that gets in the Federal Register and a federal
6 document, and everyone should be using it. And we did
7 it. Rather important, the '75 Health Effects Update
8 rather than the IRIS, which is a simplified summary
9 inaccurate of that model -- or a simplified summary
10 which can be inaccurate.

11 Thank you.

12 CHAIR WILLARD: So we've got two reports that
13 are vastly different in their findings. So I'd to ask
14 one question perhaps to Ms. Johnson and Dr. Nolan. What
15 are the primary flaws or inadequacies with the other
16 report? In other words, Dr. Nolan, what's wrong with
17 the EPA's report? Why did they get it wrong? And,
18 Ms. Johnson, what's wrong with the IERF report and where
19 did they mess up?

20 Thank you.

21 DR. ROBERT NOLAN: I -- I -- we went out and
22 collected air samples. And our air sample is
23 significantly lower than the air samples that were
24 collected by the EPA. And I think it has to do with the
25 sampling.

1 In the situation that we encountered at Clear
2 Creek on April 22nd or 23rd of last year, I think that
3 the EPA would agree that those fiber levels are not
4 going to cause significant excess risk because we --
5 now, you could say five times for one year and you can
6 multiply it out and maybe you all concur. But the model
7 that we used is the EPA's model. We assumed the potency
8 factor for the average potency. We took the acicular
9 cleavage fragments and pretended that they were
10 tremolite asbestos, which all the original scientists
11 pretty much agree they're not, and get some number.
12 Now, their exposures were higher. Now, how wide that
13 window is that we saw on those two days is a question
14 that you need to answer. And if that window is large
15 enough, then there's a certain number of days that you
16 can ride at Clear Creek with risks that are
17 significantly lower than 1 in 10,000, or you're never
18 going to approach 2 in 100.

19 CHAIR WILLARD: Ms. Johnson.

20 JERE JOHNSON: Yeah.

21 I don't disagree that if you're out there on an
22 occasion and it has been raining or it is raining,
23 you're probably going to get lower exposures. I think
24 when they went out, it rained the day before they went,
25 it rained in the day -- it rained the night between

1 their samplings events. So it was really wet. Again, I
2 think it was comparable to our February sampling event.

3 To be quite honest with you, we can't do much
4 with their numbers other than accept them for what they
5 reported because there's no technical information in
6 their report. They don't say what analytical method
7 they used. They don't talk about their pumps. There's
8 no background for us to really look at their numbers and
9 determine whether there were any differences with how we
10 did things because there's no technical information
11 in that report.

12 When you start talking about acicular cleavage
13 fragments, there are at least four different definitions
14 of what is asbestos: There's the commercial definition;
15 there's a mineralogical definition; there's a regulatory
16 definition, and there's the health definition. We use
17 the health definition, which is -- again, is not set in
18 stone, but all these little differences that
19 mineralogists will make about whether it's acicular or
20 fibril, if it gets into your lungs, we think that
21 there's still a chance it's going to cause disease. We
22 don't know the exact mechanism of asbestos disease. We
23 don't know if it's chemical or physical. We think it's
24 probably both.

25 So I don't think that my lung is going to care,

1 you know, exactly whether that came from a commercial
2 fiber by the commercial definition or whether it came
3 from a piece of the rock. And I would say that, you
4 know, the risk is going to be -- it's exactly what we
5 said in our conclusions. The lower the exposure, the
6 lower the risk.

7 But the question is, you know, the conditions
8 that they use with keeping the riders down and riding
9 when you're wet, how many days does that happen at Clear
10 Creek? And, you know, is that something that can be
11 managed around? I don't know. That's for BLM. But we
12 did our sampling in a variety of conditions on
13 typical-use scenarios. We have 275 samples; they have
14 8. I think you can take them all and use them together.
15 But, unfortunately, I don't think there's any easy
16 answer that's going to make everybody happy in this
17 situation. We think the exposure levels were high.

18 DR. ROBERT NOLAN: Let me just say a couple of
19 things. One is the iso method that the EPA used is the
20 same method that we used. We scan the grids at 20,000
21 times magnification, and we counted every fiber that was
22 greater than 5 microns regardless of the diameter.

23 OSHA had hearings in 1990 to discuss whether or
24 not cleavage fragments should be involved in asbestos.
25 I disagree that there are four definitions of asbestos.

1 And OSHA agrees with me because they said if you're
2 defining minerals, you only use geological terms.
3 Geological science is how you define minerals. Health
4 scientists can't make up their own definitions for
5 asbestos. This just isn't the way science is done.
6 When we presented this to OSHA, they agreed.

7 Now, although they may not think that your body
8 recognizes different mineral fiber types, it does. And
9 the experiments on animal studies bear this out because
10 the materials that I showed you on that slide do not
11 produce a speck of asbestosis when you used in
12 experimental animals. And they've been tested. And we
13 looked all over the world for where environmental
14 mesotheliomas occur with tremolite, whether it's in
15 Turkey, Cypress, Corsica, New Caledonia. And we looked
16 at the characteristic of these minerals, and they do not
17 have the characteristics of the fibers that I found at
18 Clear Creek. So that's a separate issue. And OSHA said
19 in the rule making that we're not saying that these
20 materials are inert, but we're saying that they're not
21 asbestos and they don't belong in the asbestos standard.
22 And OSHA does not regulate those materials as asbestos.
23 And we can produce the documentation to show that for
24 the Commission.

25 CHAIR WILLARD: Thank you.

1 (Applause.)

2 CHAIR WILLARD: Yeah, maybe a couple more
3 questions from the Commissioners, and then we've got a
4 lot of questions from the public. I really want to get
5 into those.

6 So Commissioner Van Velsor.

7 COMMISSIONER VAN VELSOR: Yes.

8 The California Department of Toxic Substances
9 Control and the Office of Environmental Health and
10 Hazard Assessment consulted with the EPA on this study,
11 and they supported the methods and also supported the
12 results. Have they had an opportunity to review the
13 study -- the IERF study? And if so, what are their --
14 do you happen to have the information from that?

15 DEPUTY DIR. GREENE: So we met with
16 representatives of Cal-EPA, including DTSC and OEEHA, I
17 think it was a week ago Friday. In the discussion that
18 they had -- when we first started off, I think there was
19 a great deal of angst because there was concern that
20 somehow this report was looking -- or was trying to
21 replicate the exact report the EPA had performed. And
22 so we explained to them that that was not what we were
23 looking at; that, again, we were doing a spot check, as
24 it were said, and that it was important that we were
25 looking at are there possibilities that BLM could

1 consider, aside from complete closure, that would be
2 able to provide some latitude of being able to provide
3 OHV recreation. So the discussion centered around the
4 fact that perhaps that they were unaware of what we were
5 looking at was, you know, could you say seasonal
6 closure, could you say, you know, 5 or 10, 20 days a
7 year, could you look at how you would manage the
8 property in an active management ability. And so that
9 was the discussion that we had. It was a preliminary
10 discussion. They appreciated it. And we left it there
11 recognizing that we needed to come back and have further
12 discussion. And so then ultimately at the end of the
13 day, certainly it's BLM's decision, but that's what we
14 needed to do. So that was how we did it.

15 One of the things that we said, by the way,
16 Commissioner Van Velsor, that was confusing to us was
17 that how it was said that it's never safe to recreate
18 even when it's actively raining. And so that was the
19 one that always caught my eye because I didn't
20 understand what "actively raining" means. I don't
21 understand that. So I'm hopeful maybe that today we can
22 understand really what that means.

23 And so we had a good dialogue. We were able to
24 share some of those thoughts, ideas, concerns that they
25 had and, as I said, agreed that we would continue the

1 discussion.

2 COMMISSIONER VAN VELSOR: Will that mean
3 providing a written report to the Bureau of Land
4 Management?

5 DEPUTY DIR. GREENE: I think that we would -- as
6 we discussed, that we needed to have further discussion,
7 and then at the end of the day that it was important for
8 consideration that then a report, a reminder or
9 something be sent to the BLM. But it needed to be --
10 again, I think we're looking at apples and oranges.
11 The question becomes if you modify behavior and
12 management, do you have opportunities that would allow
13 OHV recreation at Clear Creek?

14 COMMISSIONER VAN VELSOR: And I want just to
15 make something -- I think it's important to have the
16 written report provided to Bureau of Land Management
17 because those organizations were involved in the initial
18 consultation with EPA. And I would also like to see a
19 written Report. I also would like to second the fact
20 that this is a difference in apples and oranges because
21 the EPA study did have 242 samples. I'm assuming that
22 was statistically significant. The other study had
23 eight, which was not significant statistically. And so
24 you really can't compare them from the standpoint of the
25 actual scientific value that they provide. What you can

1 do is, like what you mentioned, you can add those in as
2 part of the overall study and consider those. But it is
3 a difference from the standpoint of comparing the two
4 equally. There is not an equal comparison there from
5 the standpoint of the actual scientific process that
6 took place.

7 DR. ROBERT NOLAN: I disagree with that. And I
8 want to go back to one thing that Daphne Greene said.
9 During the time that the samples were taken, when I read
10 the EPA report, and I listened to all that was presented
11 here today, it said that the final levels were only
12 reduced when it was actively raining. When I went to
13 the CCMA on April 22nd, 23rd last year, there was no
14 active rain. When we collected those air samples, it
15 never rained. Now we hear a little bit of two sides of
16 the story. We hear well, if it rains the night before
17 and it rains -- or it doesn't actively rain -- and we
18 stayed in Hollister, and I don't know whether it rained
19 sometime during the night, but it was certainly
20 significantly drier on the second day than it was on the
21 first. So if it rained on the second day, I would be
22 surprised.

23 Secondly, this was not designed to be a
24 five-year multimillion dollar study to collect 279 air
25 samples. And I've collected a lot of air samples in

1 life.

2 (Applause.)

3 DR. ROBERT NOLAN: When I go into a facility and
4 I monitor asbestos in an environment, if I collect ten
5 samples, I know what's going on in that plant because
6 you go to the general air samples, you go to the dust
7 tasks that the individuals do. We collected about a
8 third of the air samples on motorcycle riders that were
9 not part of the samples that were collected when the
10 park was closed. So I think that gives a different
11 impression. In our samples we selected motorcycle
12 riders because we thought they had the higher exposures.
13 The other samples are on hikers, they're on people
14 riding in SUVs with the windows closed. They're all
15 different kinds of samples. But I've measured asbestos
16 exposures in many, many environments.

17 You know, when I go to Asbest City and I measure
18 the asbestos in the air there, you can measure once a
19 week for a year; you get 50 samples. You know what's
20 going on very well. And most of the people that you
21 talk to who are industrial hygienists will tell you 3 to
22 5 samples at any task is usually what you need. So this
23 is a very large study, but I don't know how informative
24 it is because it's certainly -- I expected it to overlap
25 with the samples that I had, and it didn't. And that's

1 why I think the differences and the limitation because
2 it should have. If it's as thorough as you told me a
3 minute ago, it actually is.

4 (Applause.)

5 DR. DANIEL STRALKA: I know you guys are just
6 trying to see where all this falls out. I would like to
7 ask Bob, in the case of your sample in your collection,
8 I think you did ride over similar areas that we rode
9 over. And you don't think that your values for the
10 conditions under which you were riding and which we were
11 calling wet aren't consistent?

12 DR. ROBERT NOLAN: I said in our report that our
13 samples were similar to what you called wet. But when I
14 describe what you call wet, you called it actively
15 raining. In the moist conditions, I think when I read
16 your report that the conditions that we were riding
17 under were certainly not actively raining.

18 DR. DANIEL STRALKA: Okay. So what we did --
19 just so Daphne understands, what we were calling --
20 if -- the "actively raining" was the observation. We
21 had several -- we had two samples in February during the
22 wet season. One was during the weekend of the Enduro.
23 It was actively raining. It was drizzling at the time.
24 We went back and we looked at the rain gauges that --
25 was it Mt. Hernandez, Adriana, and Santeria where the

1 rain gauges are located. That's what we were plotting
2 our -- what was the precipitation in the area, how do we
3 determine it. So just like with the Cooper study, our
4 September studies and with Cooper's stuff, it was -- in
5 September it had been dry all summer, hadn't rained,
6 nothing. So you can definitely see there was no --
7 nothing collected in the rain gauges. And in our
8 November sampling and in our later February sampling, it
9 had rained days before -- five days -- three to five
10 days before. There was a quarter to a half an inch one
11 time, and I think there was almost an inch in the other
12 rain gauge. So that's what we were calling moist. So
13 that was our definition of moist. It was raining. It
14 had rained. There was -- definitely during the rainy
15 season. It was cooler. And it was definitely during
16 the time that most people would be using the property.
17 What we called our actively raining was, again, an
18 observation. That was the only time -- that's when we
19 were measuring samples; it was actively raining.

20 And the same case when I went back and looked at
21 the same rain gauges for the time in which the IERF
22 samples were done. There was between a half and a
23 quarter of an inch of rain the day before. There was
24 a tenth of an inch -- or a hundredth of an inch measured
25 in two of the gauges during the day that they did their

1 first sampling, and then there was another quarter of an
2 inch of rain recorded between the nights between the two
3 days of sampling.

4 So I'm just looking at the rain gauge and making
5 the assumptions that if that's true and what we measured
6 and what we observed that that was what we would call
7 wet conditions.

8 CHAIR WILLARD: Okay. I think, unless the
9 Commissioners have a burning question, we're going to
10 try to take some from the audience right now.

11 DEPUTY DIR. GREENE: Gary, can we take a break?

12 CHAIR WILLARD: A break?

13 DEPUTY DIR. GREENE: Yes.

14 CHAIR WILLARD: Sure. Ten-minute break. Let's
15 see. Back at, say, quarter, ten to, something like
16 that. Thank you.

17 DEPUTY DIR. GREENE: Thank you.

18 (Brief recess.)

19 CHAIR WILLARD: Please take your seats.

20 Commissioner Silverberg, do you have a question?

21 COMMISSIONER SILVERBERG: Tonight we've
22 discussed two reports, one by the EPA and another report
23 by the IERF. And I guess I feel like I didn't ask Rick
24 Cooper a question about the report that was done in May
25 of 2008 by BLM. I think it was Tim Radtke.

1 Is that your toxicologist?

2 RICK COOPER: Yeah, Tim is the industrial
3 hygienist for Department of Interior. And so
4 (unintelligible) Kaplin and Tim Radtke and
5 (unintelligible) works with the secretary.

6 COMMISSIONER SILVERBERG: Okay. And I guess
7 it's a fairly detailed report, again, May of 2008, that
8 indicated that -- the part that (unintelligible)
9 indicated there were 44 plus days of a year that met the
10 proper requirements to do motorcycle patrol in the park.
11 And so I'm just wondering if you -- is this part of what
12 they're considering when you're now looking at the EPA's
13 report, you're looking at your own internal
14 (unintelligible) their report and looking at the IERF
15 report? Are you including that as part of how you're
16 going to manage Clear Creek?

17 RICK COOPER: Well, I haven't looked at Tim's
18 report for us. But what Tim did for us was did a
19 characterization of use out there for our employees. I
20 believe that's the report you're looking at. And he did
21 that (unintelligible) he did a characterization of our
22 employees' work environment out there for
23 (unintelligible) office and for the Hollister field
24 office.

25 And so your point about 44 days, that is an

1 estimate that he was putting forward based on our
2 numbers for personal exposure for our employees. He was
3 thinking that we might want to look at limiting
4 motorcycle patrol to something like 44 days for
5 individuals. So I'm fairly sure that's what we're
6 discussing.

7 COMMISSIONER SILVERBERG: Right. I guess it's
8 just the --

9 RICK COOPER: Oh, and then -- I'm sorry. So the
10 question is am I utilizing that information and weighing
11 that information with the EPA information and with IERF?
12 It's certainly something, you know, I consider a lot --
13 a lot of, you know, the information that I went through
14 '78, certainly consider that information, you know,
15 primarily as related to my BLM employees, and maybe that
16 might (unintelligible) work as a contractor. But,
17 really, I'm primarily weighing the public risks as were
18 characterized in the EPA report as being kind of the
19 main basis for decision making on land use in there for
20 the (unintelligible) and not -- not Tim Radtke's report.
21 So it's a factor out there, but it's -- it's not
22 weighing that, no.

23 COMMISSIONER SILVERBERG: And now that we have
24 the new report from the IERF, is that going to allow
25 time for BLM to make sure before they make any final

1 decisions that they look to make sure why these two
2 reports are so different? Is it your opinion they're
3 going to look at it?

4 RICK COOPER: Well, ultimately it will be me
5 who's looking at it. I'll be looking at probably
6 Dr. (unintelligible) and my scientists. I'll also be
7 working with our cooperating agency. I'll be trying to
8 get an interpretation and call Dr. Nolan for some
9 clarifications on things in his report, as well as try
10 to get a better understanding of the IERF report from
11 hopefully the state scientists as -- and -- and
12 obviously the EPA's scientists. So, you know, I'll be
13 looking at enough information, you know. So
14 information's not going to be thrown out or consolidated
15 (unintelligible) see how that is going to help us, you
16 know, in arriving at a final land-use plan for that
17 area.

18 COMMISSIONER SILVERBERG: I'd like to offer just
19 one thought about the -- again, just using some common
20 sense. As I said earlier, I'm a pretty simple guy. And
21 the difference in the testing is so dramatically
22 different that the first thought you had as a goal, how
23 can that possibly be? And interesting enough, having
24 been to Clear Creek myself, and I think you all probably
25 agree with this, is that when the first rains hit out

1 there, it seems like the soil conditions are like a
2 sponge and it really soaks up that first part. And so
3 then the subsequent rains after that actually make the
4 soil conditions really nice and make the road more
5 (unintelligible) as when the IERF was out doing their
6 study. Because it wasn't just a top layer of moisture
7 you're talking about; there was a bottom layer of
8 moisture that was soaked into the soil. And then
9 (unintelligible) top layer, it really makes for very
10 good conditions. And in the testing, it seems from the
11 time frames that I've seen from the sampling that the
12 EPA did, if you were out there even during the wet
13 conditions before there was any substantial rain to
14 where the moisture, you know, wasn't underneath the
15 soil, it was on top and that was it, then that's a
16 different set of conditions which would yield
17 (unintelligible). So I guess I'm saying that I think
18 that the sampling is really critical, and that would be
19 something that maybe if there were cause for further
20 sampling that would be what I would recommend.

21 RICK COOPER: Well, in terms of the IERF report,
22 I don't really see a significant difference between what
23 their results were versus what the really wet results
24 were for EPA terms of fibers. I mean that's -- again,
25 that's that sort of a layman's look and see. You guys

1 are looking at this information I'm looking at, and it's
2 not a lot different. It's just that is the time that
3 they were out there. I actually went out to the site on
4 the second day when they did sampling. There wasn't any
5 dust being generated. It was moist. And so I wasn't
6 really surprised with the low numbers that they came up
7 with. Our standard health and safety plans for what we
8 do, we try to work in that environment, we look for
9 those opportunities where there's moisture out there.
10 If there's not moisture out there, we put moisture down
11 in order to do work in that environment. Because the
12 asbestos does -- it will -- based on everything I've
13 read, everything that I've been told, it doesn't take
14 long for the small fiber asbestos to begin to get
15 airborne again after a trial period. And so I think
16 that's sort of what we saw with -- my interpretation
17 would be is that's what we saw with the November
18 sampling where you had a pretty good rainfall event in
19 November. We followed it up with sampling five days
20 afterwards, and we came up with some pretty high
21 numbers. So (unintelligible) as far as the fiber
22 concentrations. So, you know, it's all -- all of this
23 information has to be looked at and considered and not
24 discount anything that we can. But we will be using all
25 of that. Whether or not we need to do more sampling,

1 you know, that may be -- that may be beyond my pay grade
2 to make that decision as to whether or not we're going
3 to do more sampling. But certainly that's something
4 that can be considered if warranted.

5 CHAIR WILLARD: Okay. Thank you.

6 So let's now get some questions from the public.
7 I already see the first flaw with our methodology
8 whereas we've given them too much room to write the
9 questions.

10 Okay. Region 9 and the EPA was brought in as a
11 cooperating agency to do the air sampling and risk
12 assessment. Why was Region 9 and the EPA given the duty
13 of reviewing the Draft EIS for NEPA conformance? Much
14 of the controversy stems from the data (unintelligible)
15 that Region 9 and the EPA used. How could they be
16 objective on their own study?

17 I think that's to you, Rick -- or BLM and EPA.
18 Region 9 and EPA, either one.

19 RICK COOPER: Yeah. Well, and Jere may be able
20 to fill in some gaps (unintelligible).

21 But in normal procedure, all environmental
22 impact statements that the Bureau of Land Management
23 does, and I believe almost all federal agencies, the EPA
24 has purview to review those and look for NEPA adequacy
25 of how things are done and analyzed. They're not -- I

1 don't believe it necessarily at all has to do with
2 content, but they do look very closely to some key
3 things in their realm and do that review. So it's a
4 branch of Region 9 that's doing that review of our
5 document, and that's just normal procedure for us.

6 As far as them being a cooperating agency for us
7 to help us take the risk assessment information and use
8 that information to help us analyze our alternatives,
9 that's a whole other separate role we're asking their
10 scientific group to do. So that's why they're engaged
11 on both venues.

12 CHAIR WILLARD: Okay. I'll ask another one.
13 This looks like it's also for BLM. There's three parts
14 to it. From what date to what date do the bulk of CCMA
15 visits occur? Question two, from what date to what date
16 do the bulk of rain events occur? Number three, is
17 November 4th to 5th within either of these dates? So
18 when does a bulk of visitation occur? When does the
19 primary precipitation occur? And was the November 4th
20 and 5th -- and I think that was a sample date -- does
21 that occur within either of these dates? So he's
22 looking for you to bracket the dates most visitation
23 occurs and the rain as well.

24 RICK COOPER: I'm probably the wrong individual
25 to ask that. I'll probably have to talk to my science

1 team a little bit more. So as far as visitor use goes,
2 most visitor use goes from the October 15th period to --
3 and through the winter months. But I don't have -- I
4 don't have the survey information in my head. I
5 (unintelligible) surveys (unintelligible) those days.

6 CHAIR WILLARD: Okay. Why are the people of
7 California allowing the BLM to steal sovereign property
8 around the state? I'm not so sure that's a question for
9 BLM (unintelligible).

10 Does anyone want to answer that?

11 The difference between the two studies was one
12 was done by scientists, the other by a government agency
13 with a political agenda. Again, that's more of a
14 comment than a question.

15 Commissioner Lueder, you've got some. Why don't
16 you go ahead.

17 COMMISSIONER LUEDER: Sure. This is for BLM.
18 Question is, why currently do BLM employees not wear air
19 protection masks, suits, or any safety equipment while
20 working in Clear Creek area? These employees continue
21 to drive through Clear Creek with vehicle windows open.
22 Why are employees allowed to do this but the public
23 cannot?

24 (Applause.)

25 RICK COOPER: Well, currently the public can

1 drive through at least on the county road portion of it.
2 The BLM employees should have windows up if they're, in
3 theory, in a situation where there's a dust-generating
4 atmosphere. So if they're not doing that, that's
5 something that needs to be addressed.

6 As far as -- what was the other question? Why
7 do they go through with the windows down? And then what
8 was the first question?

9 COMMISSIONER LUEDER: Basically, the question
10 was, why are they not wearing air protection equipment.

11 CHAIR WILLARD: Safety rules, hazmat --

12 RICK COOPER: The health and safety plan that we
13 have for that, we do monitoring on our own. We do
14 characterize their use out there periodically for air
15 flow and do air sampling. If we begin to work -- if we
16 begin to bust the PELs or they are getting into a very
17 dusty environment that's been characterized by the
18 Radtke report that we have, if we begin doing activities
19 that he's determined are risks, then they're supposed to
20 don respirators on. But that's sort of last resort. So
21 the idea is if you're getting into a dusty environment,
22 you need to remove yourself from the area and not work
23 in there. That's sort of the basics of the health and
24 safety plan. If we're going into the area and we know
25 we have to go in there to do something, like get a piece

1 of equipment or fix a piece of equipment, then we've got
2 to get in and get out of a dusty environment, you know,
3 they don their coveralls, put on the air masks and go
4 ahead and do what they need to do. But ideally when
5 they go in there, you know, we're going in at a time
6 period when they don't have to do that. That's why we
7 (unintelligible).

8 COMMISSIONER LUEDER: Okay. Next question is
9 for BLM. What time of year did most of the respiratory
10 staging area mediation take place, and did the workers
11 wear respiratory protection during this work?

12 RICK COOPER: I don't believe we wore
13 respiratory protection. It was required that they did
14 water down those sites. They did that during a summer
15 period (unintelligible) time period (unintelligible)
16 working in there. Those areas were funded through
17 Recovery Act funds. And so we had a time table to work
18 with a contractor who was going to remove those
19 facilities and place them in our campgrounds. So our
20 crews had to go in to assist with that during the summer
21 months. But we did do some road work, and we did apply
22 water in order to reduce dust.

23 COMMISSIONER LUEDER: Okay. One more question
24 for BLM. What happened to our OHV-friendly Oak Flat
25 staging area? It looks only good for picnics now.

1 RICK COOPER: Well, that was one of the areas
2 that we did improvements on create camping opportunities
3 outside of ACEC. And so it ended up creating, I think,
4 six sites with picnic tables, rest room area. You'll
5 see them tomorrow.

6 (Unintelligible audience participation.)

7 COMMISSIONER LUEDER: So we're going to move on
8 to some questions for the EPA. The question is, why did
9 you use a TEM to count PCM fibers?

10 JERE JOHNSON: The TEM is the more sophisticated
11 and more modern (unintelligible). The problem with the
12 PCM is not only did it not see fibers longer than 5
13 microns, but it can't tell if the fiber is
14 (unintelligible) asbestos or some other mineral or
15 something else. So TEM not only allows you to count and
16 measure the fiber matter, but it also allows you to
17 determine whether it's actually asbestos.

18 COMMISSIONER LUEDER: Some of these are beyond
19 me. I'm not the most technical person either. So I'm
20 just asking the questions and listening to the answer
21 here. Why does it look like the scale used for SUVs
22 changed. The SUV scale that was shown in .01, .02, .03
23 scale, hundreds, and other activity scales used were
24 shown as .5, .1, .15 scale? SUV exposure looked better.

25 JERE JOHNSON: Yeah, that's true. The scale on

1 the SUV was different. And the thing here was that we
2 were trying to show, you know, how the SUV
3 concentrations (unintelligible). So we were just trying
4 to show the difference between windows closed and
5 windows open. And so (unintelligible) and change the
6 scale.

7 (Unintelligible audience participation.)

8 JERE JOHNSON: Well, I think SUV exposures are
9 in there with the other figures. So yeah, that was just
10 for the windows opened and closed. The SUV exposures
11 were shown next to ATVs and motorcycles throughout
12 (unintelligible).

13 (Unintelligible audience participation.)

14 DEPUTY DIR. GREENE: Chair, excuse me. Sorry.
15 I just need to interrupt because the point was not to go
16 back and forth. Certainly if you want to bring that up
17 when we have the public comment --

18 (Unintelligible audience participation.)

19 DEPUTY DIR. GREENE: I understand. The problem
20 is, again, trying to capture your voice. We can't
21 necessarily capture it.

22 (Unintelligible audience participation.)

23 DEPUTY DIR. GREENE: That's okay.

24 CHAIR WILLARD: So we really can't have comments
25 from the people right now because it's hard for the

1 stenographer to hear what's going on. So if you have a
2 comment, we will have another comment period. Just fill
3 one of these out and turn it in, and then you can have
4 your say. Thank you.

5 Next question.

6 COMMISSIONER LUEDER: Okay. The question number
7 one for EPA was the (unintelligible) fell out of the
8 EPA's 2008 study, asbestos is (unintelligible)
9 fragments. How does this compare with the recent OHVMR
10 findings? So that's question number one. From existing
11 PCM and the TEM data collected in CCMA, what is the
12 ratio of PCMs to PCME fibers?

13 DR. DANIEL STRALKA: So let's see. The first
14 question was (unintelligible) ratios to
15 (unintelligible) -- or ratio (unintelligible). So in
16 general, what we were measuring is PCME equivalents, and
17 Jere was talking about the dimensions that we defined as
18 would be equivalent to whether (unintelligible) they
19 would have seen under a base (unintelligible). We were
20 looking at all fibers and measuring all fibers. There's
21 actually a significant number of shorter fibers shorter
22 than 5 microns which were measured but were not used in
23 the calculations for risk or the actual exposure of
24 fibers for volume of air. So it was actually measured.
25 There was actually a significant amount of smaller,

1 shorter fibers that you always see when you're able to
2 use the more -- higher magnification with the TEM
3 apparatus.

4 And then the second question was the ratios.
5 Other than asbestos and chrysotile --

6 COMMISSIONER LUEDER: I'd be happy to read it.
7 From existing PCM data and TEM data collected in CCMA,
8 what is the ratio of PCM to PCME fibers.

9 DR. DANIEL STRALKA: The ratio of PCM to PCME.
10 I'm not sure how to -- it doesn't make sense
11 (unintelligible).

12 COMMISSIONER LUEDER: Okay.

13 CHAIR WILLARD: Next question.

14 COMMISSIONER LUEDER: All right. EPA just today
15 here (unintelligible) public employees retained more
16 environmental responsibility posted their objections to
17 the EPA wanting to raise the same safe radiation levels
18 after the Japan disaster. How can we trust your levels
19 that you came up with for the CCMA?

20 DR. DANIEL STRALKA: So what we did with these,
21 the CCMA (unintelligible) was used for our standard
22 (unintelligible) and 1 in 10,000 level bracketed as
23 (unintelligible). Risk management range, we calculated
24 the probability of risk associated with exposure as we
25 do always in our different programs to try to inform the

1 managers about what the possible exposure and the
2 outcome is with those. So we just -- we did the
3 standard calculations the way we've done them in all our
4 different exposure evaluations since, basically, '86.

5 COMMISSIONER LUEDER: All right. And the last
6 one is a request to have copies of the BLM and EPA slide
7 show made available to the public. I'm not sure that's
8 something Division could arrange for.

9 DEPUTY DIR. GREENE: We'll work with BLM and
10 EPA.

11 CHAIR WILLARD: Commissioner Silverberg, you've
12 got a handful there.

13 COMMISSIONER SILVERBERG: Okay. First question,
14 and I suppose this is to Rick, what is being done about
15 the mine toxic runoff into the creeks from the
16 (unintelligible) mine? Has toxic storage been removed?

17 RICK COOPER: As I mentioned in the report, and
18 I'm not probably the expert to talk to -- I'm sorry?

19 COMMISSIONER SILVERBERG: Yeah, from the
20 (unintelligible).

21 RICK COOPER: Okay. So (unintelligible) is the
22 proposed or is designated -- it is being proposed at the
23 BLM (unintelligible) list for a Superfund site. The EPA
24 assigns U.S.G.S. (unintelligible) BLM. Others are
25 evaluating that matter and doing sampling to determine

1 the degree of runoff and then also taking a look at some
2 pole studies as to how (unintelligible) need
3 (unintelligible). So that's ongoing right now. That's
4 probably all I should say. That's about all I know.

5 COMMISSIONER SILVERBERG: Okay. This is for
6 EPA, and this is regarding the sampling that was done in
7 relation to children. Why would you use adults on adult
8 bikes to show exposure to children, i.e., children ride
9 at a much slower pace where adults ride considerably
10 faster. And, also, I suppose when parents riding with
11 their children, usually they put them up front and so
12 they can be there to pick them up if they fall down
13 because you can't ride looking back (unintelligible).
14 Some of them probably do, but -- anyhow, that's the
15 question.

16 JERE JOHNSON: Yeah, I mean we used the members
17 of the Coast Guard Pacific Strike Team to do the
18 sampling because we can't put samplers on individuals to
19 go and ride. It's not considered (unintelligible). You
20 need special permission. So, of course, we had to use
21 adult riders for the children. And, you know, that's
22 why we had the information from the lead bike and the
23 other stuff. If your riding conditions out there are
24 different than what we sampled for and we
25 (unintelligible) really fair in our study

1 (unintelligible) exactly what they did, then you can
2 adjust the risk numbers and exposure numbers up or down.
3 That's one of the reasons we did the different orders.
4 That's one of the reasons we did (unintelligible) and
5 then the 95 (unintelligible) upper limit and the
6 different exposures. So differences in riding
7 conditions will make a difference in your exposures.
8 And hopefully there's enough information in your report
9 so people can kind of see what their typical use is.

10 COMMISSIONER SILVERBERG: Last question for me
11 from our audience, and this will take a little
12 extrapolation, and maybe Jere and (unintelligible) just
13 comment on this. If I handed to you the used air filter
14 out of my car right now, how would it test and what
15 would you expect to find compared to your CCMA findings?
16 And let's just qualify it a little by saying this person
17 drives in city conditions and in country conditions,
18 country roads and such. I think they're looking for
19 what the toxicity of that filter -- what would it show
20 and basically in terms of asbestos?

21 DR. DANIEL STRALKA: If you'd be able to look at
22 that filter, would you be able to maybe determine if
23 there was any asbestos exposure on that filter. But,
24 basically, that's all you'd be able to say is, is it
25 there or isn't it (unintelligible). It would be hard

1 just to correlate anything with where they've been,
2 exactly how much they've been supposed to the time
3 period. So you could tell if there was asbestos in
4 there or not, and that's basically all you could tell.
5 Maybe (unintelligible) more than nothing, but,
6 basically, it's a yes, no sort of question.

7 COMMISSIONER SILVERBERG: I think what they're
8 looking for in this question is what was the -- it turns
9 out you need to change your air filter about every
10 15,000 miles on a car under normal driving conditions.

11 DR. DANIEL STRALKA: And who does. Even under
12 normal -- you usually trade cars -- I have one with
13 300,000 miles on it, but I'm changing -- I haven't
14 changed it twice.

15 COMMISSIONER SILVERBERG: Okay. But I suppose
16 in the context of this they're trying to get an average.
17 But I think what they were looking at is comparative,
18 what kind (unintelligible).

19 CHAIR WILLARD: And, Dr. Nolan, do you have a
20 different response to that question?

21 DR. ROBERT NOLAN: I've never thought
22 about that question. And when I don't know the baffles
23 in an air filter for a car are small enough to
24 (unintelligible) asbestos. They may be too large.

25 CHAIR WILLARD: Go ahead.

1 COMMISSIONER SLAVIK: This is a question for the
2 BLM. How many dollars do Green Sticker Funds produce to
3 rehabilitate trailers, many were highly desirable
4 (unintelligible) that the OHV community was told could
5 be discussed for inclusion for the 2000 -- or the
6 270-mile route system?

7 RICK COOPER: Don't know the answer to that.

8 COMMISSIONER SLAVIK: Is there a significant
9 number of OHV dollars spent on trails -- or virtually
10 all the money spent on trail system, is that OHV?

11 RICK COOPER: Five percent of -- since I've been
12 here -- since the five years I've been here, we've had
13 grant funding all but one year and trail maintenance and
14 trail rehabilitation and trail construction on all parts
15 of those grants that we got. The percentage difference
16 in terms of what we rehabilitated versus what we
17 maintained versus anything that we (unintelligible), I
18 honestly don't know. So that's it.

19 COMMISSIONER SLAVIK: I think what the question
20 is getting at is apparently there was a discussion about
21 inclusion in the route system that -- your final route
22 system, how much money was OHV money that was used for
23 those trails. Probably all of them, I guess.

24 RICK COOPER: So we got money in -- beginning in
25 '06. That was the first year we didn't really have any

1 funds. '07, '08, '09 -- I guess '07 was the last year
2 we got funds since I've been here. So I think we had
3 some grants in '04 and '05 that we were using to help us
4 implement the decisions that were -- you know, and they
5 were carry-over funds that we were using
6 (unintelligible) for '06. But, again, you know, exactly
7 what we were able to rehabilitate, exactly what we
8 changed (unintelligible), I don't know.

9 COMMISSIONER SLAVIK: And how many of those were
10 included in the trail system, ultimately? I think
11 that's what they're getting at in this question.

12 RICK COOPER: Well, I'm not sure I understand
13 it, then. We have 242 miles that was designated in
14 route designation and planned. And under that -- in
15 that route designation plan, we identified that the
16 trails would be rehabilitated. We identified trails
17 that were going to be taken out of the system. We
18 identified trails that would be added (unintelligible).
19 Exactly how many, you know, I don't have that off the
20 top of my head.

21 COMMISSIONER SLAVIK: All right. Thank you.

22 This is for the EPA. Can the EPA address the
23 issue of the IRIS risk unit for asbestos? The IRIS risk
24 unit excludes all chrysotile mining and milling
25 epidemiological studies -- I'm sorry -- and includes

1 only occupational exposure data for refined asbestos.
2 The risk unit for chrysotile mining and milling is one
3 to two orders of magnitude lower than the IRIS risk
4 unit. Why does EPA apply the IRIS risk unit to CCMA
5 when it is most similar to mining and milling? Do you
6 understand that?

7 DR. DANIEL STRALKA: No, I'm not sure where
8 they're coming from. But between --

9 COMMISSIONER SLAVIK: Let's take the last part
10 of the question. Why does EPA apply the IRIS risk unit
11 to the CCMA when it is most similar to mining and
12 milling?

13 DR. DANIEL STRALKA: The standards of
14 (unintelligible) that EPA is using in toxicity matter is
15 a difference (unintelligible) looked at all the studies
16 that were available at the time which was prior to '85.
17 Looked at all their studies and looked at which values
18 had sufficient data to add into a toxicity model and
19 actually do the calculations. So there were questions
20 about some of the studies that were in mining in that
21 were not sufficient and that they were -- the exposure
22 information was not sufficient to fit into the toxicity
23 model. So, basically, what we do have is we have all
24 the other data that was available was a quality control
25 evaluation (unintelligible) all different studies

1 (unintelligible) for these base studies. And it's
2 possible that were of better quality to calculate what
3 was the outcome associated with exposures of a known
4 duration from these different operations and then look
5 at how those range. And then from those, they were
6 plugged into the exposure models and tried to calculate
7 what would be the probability of disease out from
8 associated different levels of exposure.

9 DR. RICHARD WILSON: I think this is slightly
10 (unintelligible) at the time of that study, all of the
11 measurements were not being done with electromicroscopy.
12 Quite explicitly, the EPA study assumed that all types
13 of asbestos were the same. Whether or not that's a good
14 idea or not is a good question. And Nicholson did that
15 study very explicitly (unintelligible) included all
16 studies and did not distinct (unintelligible) simply
17 dominated by that after (unintelligible).

18 Now, if you take a (unintelligible) study
19 (unintelligible) in the (unintelligible) and included in
20 this is what children do (unintelligible), if you want
21 to go beyond that, that's (unintelligible), you should
22 go the 2003 attempt by the EPA update. And although it
23 never came out, the final conclusion, the EPA
24 (unintelligible) was, in fact, from (unintelligible)
25 comprehensive (unintelligible) five times exposure than

1 lung cancer and about 200 less (unintelligible). So if
2 you want to go beyond the EPA report in any way
3 whatsoever, then I think you should go to the 2003
4 update which has never been finally finalized. And I
5 take that (unintelligible)

6 DR. DANIEL STRALKA: So this is, again, more
7 confusion about which is being done. It's true that EPA
8 (unintelligible) report referring to. We looked at that
9 report, and it went out for peer review and
10 (unintelligible) scientific review. It was not
11 accepted. But, basically, their conclusion is -- what
12 they were trying to do with that study was to start from
13 scratch, so, in other words, go back to original
14 foundation, start over. So don't try other
15 (unintelligible) Nicholson study, but look at basic
16 principles and see what was the best number that you
17 could derive and what was the best measure that you
18 could measure the toxicity, what was the best parameter.
19 So they weren't using PCM equivalent fibers. They were
20 using a totally different definition of fibers based on
21 what (unintelligible), their study. And they go back
22 and look at other studies and came up with a different
23 unit of measure which they thought better explains
24 (unintelligible). And so comparisons are -- again, it's
25 not quite the same. They're slightly different. In

1 fact, it is true that we started to look at -- back in
2 September you see comments and criticisms of that
3 report, and that's why it was never one (unintelligible)
4 final.

5 CHAIR WILLARD: Commissioner Franklin, you have
6 some questions?

7 COMMISSIONER FRANKLIN: I've got a few here.
8 But, Dr. Nolan, you look like you have an opinion on
9 that subject just now. Do you have something you want
10 to add?

11 DR. ROBERT NOLAN: Yes. I think that there's
12 little doubt in my mind that fiber (unintelligible)
13 perimeter in looking at asbestos risk, and I tend to
14 think they were (unintelligible) from 2000 and 2001 that
15 says the ratio of mesothelioma from the (unintelligible)
16 for chrysotile (unintelligible) about 100 to 200
17 (unintelligible), something like that. It's about 500
18 times more potent because these (unintelligible)
19 chrysotile. And I think the EPA by averaging that
20 number (unintelligible) nobody would average these
21 things together. They're different (unintelligible) by
22 a factor of 500. So you're going to over-protect some
23 and under-protect others. And I think by
24 under-protecting others, we've permitted there
25 (unintelligible) amphibole data (unintelligible)

1 mesothelioma illness to develop in the list modern
2 regulatory history.

3 COMMISSIONER FRANKLIN: All right. This is a
4 question, and it looks like it could be addressed
5 (unintelligible) here from each of our groups here, EPA,
6 BLM and IERF. And the question is, can the EPA, the BLM
7 or Dr. Nolan and his group tell us how many people, if
8 any, have died from asbestos-related, only type of
9 diseases from the Clear Creek area in the last 100 to
10 150 years? Has there been any reported cases of serious
11 illness from this particular area when we're talking
12 recreation only?

13 DR. DANIEL STRALKA: So I mean when you look at
14 the total number of -- in this case we're talking about
15 mesothelioma, and you can say in California there's --

16 COMMISSIONER FRANKLIN: In Clear Creek

17 DR. DANIEL STRALKA: It is a rare cancer. So in
18 California you'd expect to see or it is seen, about 300
19 cases a year.

20 COMMISSIONER FRANKLIN: Was --

21 CHAIR WILLARD: I'm sorry, how many --

22 DR. DANIEL STRALKA: About 300.

23 COMMISSIONER FRANKLIN: And that's coming from
24 recreation --

25 DR. DANIEL STRALKA: All cases (unintelligible).

1 So have there been cases of mesothelioma from recreation
2 in exposure to Clear Creek? No one's ever looked. No
3 one's asked the question specifically to look at what
4 people were exposed to. It's not been tracked for the
5 number of people that are in there and are only there
6 for recreation that didn't have any other occupational
7 exposure.

8 COMMISSIONER FRANKLIN: Please.

9 DR. RICHARD WILSON: I think it's important to
10 remember that the government trial -- that one of the
11 things statistically impossible to determine and one has
12 to discuss that solely on a calculated basis is the
13 human model, and that (unintelligible) thing about all
14 the cancer risk assessments and all things, long-term
15 issues. And so when discussing what is the model and
16 therefore (unintelligible) be consistent and choose the
17 model and (unintelligible) fibers and what
18 (unintelligible). Get the definition straight and then
19 take the calculation at that point. And so
20 (unintelligible) stressing what does he mean? Done
21 (unintelligible) what has been done by the EPA since
22 that time, (unintelligible) right or wrong. Those were
23 issues (unintelligible) sometime later. But
24 nonetheless, those -- if we're going to go beyond a
25 public (unintelligible), then those are going to look at

1 (unintelligible) and look at the presentations
2 (unintelligible) 2003 study.

3 COMMISSIONER FRANKLIN: I think that would be a
4 good question to ask here if we're talking about the
5 second (unintelligible) management area (unintelligible)
6 look and see if anybody has gotten (unintelligible).

7 So a general question for BLM, how could the
8 State of California presume the OHV Division go about
9 purchasing the Clear Creek area's 75,000 acres so that
10 Clear Creek can be returned to the public? I guess that
11 was just a statement.

12 General question here probably for EPA, has
13 there ever been a study of the wildlife and any lung
14 disease in the Clear Creek area?

15 JERE JOHNSON: There hasn't been. The only
16 thing that's even remotely associated with this is some
17 work that was done (unintelligible) similar
18 (unintelligible) outside of Sacramento. And there it's
19 a community that's built on -- actually, it's an
20 amphibole asbestos deposit. And we looked at recreation
21 exposure. But there we're talking about
22 (unintelligible) and playing baseball. And we did find
23 exposures up there. And several of the residents living
24 up there, when their dogs passed away, they sent their
25 dog lungs into a laboratory to have them analyzed, and

1 they did find that they had asbestos fibers in the
2 lungs. And that's the closest thing I've ever -- I'm
3 aware of to any sort of wildlife studies. But, you
4 know, there it makes sense. The dogs are close to the
5 ground and the dirt. But, you know, did the dogs die of
6 it, you know, that's the only thing we ever have gotten.

7 COMMISSIONER FRANKLIN: And the last one I have
8 here is directed to BLM. It says, how often has BLM's
9 head manager, Rick Cooper, been in Clear Creek? And
10 what activities did he partake in. Any activities,
11 work?

12 RICK COOPER: All my activities in Clear Creek
13 have been work related. I've probably entered the area,
14 over the last five years, maybe 16 times, in that range,
15 in there. Participated on ATV twice -- riding ATVs once
16 with one (unintelligible) of my resource advisory
17 council members is an avid rider. The rest of that time
18 was mostly work-related tasks, you know, looking into
19 investigations of marijuana activity that we have taking
20 place in the area or vandalism issues, law enforcement
21 people. Did some resource monitoring with my botanist
22 in looking at endangered species habitat, that type of
23 thing.

24 CHAIR WILLARD: I was looking through the IERF
25 report and I found a passage I underlined and I need to

1 ask about this (unintelligible) now. And perhaps
2 Dr. Nolan or Dr. Wilson -- it's on page 7 under the
3 Summary of EPA Region 9's 2008 results, about
4 8 percent -- I thought this extraordinary, so that's why
5 I highlighted it. About 8 percent of the airborne
6 fibers analyzed by EPA Region 9 were reported to be
7 amphibole asbestos. Chrysotile is the predominant
8 asbestos type in most lung (unintelligible). There are
9 no other reports in the scientific literature that claim
10 as high an amphibole asbestos concentration in
11 (unintelligible) the area (unintelligible) anywhere in
12 the world with the exception of the air samples taken in
13 the proximity of a mine that contains amphibole
14 asbestos, citing Thompson's (unintelligible) World
15 Health Organization, 1986.

16 So, again, I found that extraordinary. I'd just
17 like to have you kind of explain what the significance
18 of that was.

19 DR. ROBERT NOLAN: Tremolite asbestos is an
20 extremely rare mineral. Economic deposits are only in
21 South Africa, Australia. There are no actinolite mines
22 in North America and no amphibole asbestos mines of any
23 consequence in North America. So when I see -- now,
24 amphiboles are very common in Eurostrasa (phonetic) but
25 very rarely do they form asbestos. So when I see a

1 number like 8 percent, I say to myself, it seems
2 unlikely that at 8 percent of the amphiboles in this
3 area would actually be asbestos. Because I've never
4 seen in any other place where 8 percent of the
5 amphiboles are asbestos in an air sample. Generally,
6 asbestos (unintelligible) in the air is chrysotile. So
7 it was a little suspicious. And that's why when we
8 found the circular needles, I wasn't surprised because I
9 didn't expect to find amphibole asbestos. It's an
10 extremely unusual finding, and it should have been more
11 substantially characterized. And the EPA report can be
12 convincing that it really had amphibole asbestos.

13 CHAIR WILLARD: Ms. Johnson.

14 JERE JOHNSON: I think, guys, this is one of the
15 ways we're going to get in the weeds here on what you
16 decide is asbestos again.

17 Actually, 8 percent of the PCME fibers that we
18 detected or particles or whatever you want to call them,
19 they fit the size definition, and they were
20 characterized chemically to be amphibole. Now, when we
21 did the work in El Dorado Hills, almost everything we
22 found there was tremolite or actinolite. It was
23 amphibole in the natural outcrop. The chrysotile we
24 found there actually was imported in the infield
25 material they used for the baseball fields because it

1 apparently came from an area in California that had a
2 lot of chrysotile. It's a serpentine area. But we --
3 again, this is 8 percent of the PCME fibers. And
4 talking to the California Geological Survey about that,
5 they, frankly weren't surprised that we had found both
6 chrysotile and amphibole fibers in our samples here.

7 CHAIR WILLARD: Okay.

8 DEPUTY DIR. GREENE: And I just have two
9 questions, if I may, because I've been trying to grapple
10 with all of this. And so, again, I appreciate
11 everybody. I think it's extremely valuable to be able
12 to hear the dialogue.

13 Two questions, and that is, Jere, perhaps you
14 can help me because I was trying to track you, but when
15 you were talking earlier about the four categories that
16 you look at, commercial, mineralogical, regulatory and
17 health, can you explain that a little bit more? Because
18 I didn't quite track that.

19 JERE JOHNSON: Yeah. I mean, you know,
20 Dr. Nolan's correct in some respect. These aren't set
21 definitions that the groups have agreed to. What I'm
22 saying is that there's a lot of -- there's a lot of
23 chrysotile or amphibole in the earth's crust that from a
24 commercial standpoint wouldn't be considered asbestos.
25 In other words, it doesn't have the characteristics in

1 terms of its growth pattern or whatever to make it
2 commercial. That doesn't mean that it's necessarily
3 benign. And if you looked at what -- if you look at
4 what OSHA regulates, OSHA regulates six different types
5 of asbestos. Is that the only type of mineral fiber
6 that creates a health problem when inhaled? No. But
7 those are the six commercially mined fibers. And so
8 when OSHA's looking at their stuff, they're looking at
9 the commercial world and what is commercially available
10 in the workplace that needs regulation. So, again, this
11 is one of those things where we could spend days talking
12 about this. But, you know, what may not be a commercial
13 fiber in terms of its marketability could still cause
14 injury if it's breathed deep into the lungs.

15 And so, again, what we're looking at are the
16 PCME fibers. And some of these differentiations like
17 cleavage fragments are things that the mineralogists
18 worry about a lot. Yes, it's true that possibly
19 different fiber sizes, different chemical
20 contribution -- compositions can have different
21 potencies for different diseases, but, you know, as a
22 whole, some of these distinctions, when you're looking
23 at exposure and health effects, don't really mean a lot.

24 DEPUTY DIR. GREENE: So help me to understand
25 this. As somebody who's responsible for managing lands

1 similar to Rick, how is it then -- typically I know that
2 if -- I need to make sure that the water coming off of
3 our parks is clean water -- and so that is regulated by
4 the Water Board for the state. I know that air -- in
5 terms of PM10, PM2.5, I know there's that number. I
6 guess what's confusing to me, and I would imagine for
7 Rick, is, is -- what's the number that -- do we have a
8 number that says this is the number, and if you exceed
9 this from a regulatory perspective, because that's what
10 we have to work with, something that's not moving, does
11 that exist, number one? And then does it exist from an
12 industrial standard or an environmental standard?

13 DR. DANIEL STRALKA: Yes. So, basically,
14 there -- the -- what we did in our report is we looked
15 at different the activities that would be producing the
16 exposure. And then from that exposure, we calculated
17 what the overall risk would be. And in both reports,
18 essentially using the same measure as far as the
19 toxicity factor, how potent is the factor -- and we had
20 very similar definitions of what are the fiber lengths,
21 what is the PCM equivalent. So in that sense, that is
22 the number that we were looking at. That was the number
23 that was presented in the calculations, and that's where
24 we came up with our 10 to the minus -- our risk values
25 for the different activities.

1 DEPUTY DIR. GREENE: So does mean -- I'm sorry
2 to interrupt. But does that mean, then, that
3 anyplace -- so we should start being aware, Forest
4 Service, who I'm not sure is here anymore -- but as the
5 Forest Service goes to start closing trails based on the
6 fact that there's serpentinite rock or anyplace else in
7 California, we know in particular that if you hit that
8 number, OHV recreation or hiking or whatever is not
9 allowed?

10 DR. DANIEL STRALKA: No. Again, that's a
11 management decision on how to manage the property and to
12 minimize exposure to asbestos that then becomes
13 airborne. We don't know -- the problem that we have
14 right now is we don't have a measure like the measure
15 you're talking about, the PM2.5 or the concentration
16 that's in the water because we don't have a correlated
17 concentration that you could measure in a soil sample
18 and then say that that is -- that is a soil sample or
19 that area is presenting enough of a risk because of the
20 concentration of asbestos. The problem is is in the
21 activity -- it's the activity that causes the exposure.
22 So, again, as Jere was talking about, having asbestos in
23 the soil is not necessarily a hazard. However, when you
24 do the activity, whatever that is -- and we looked at
25 several different activities at CCMA, those activities

1 inherently cause dust getting kicked up into the air.
2 That dust is where we were measuring the exposure. So
3 we were measuring actual exposures.

4 DEPUTY DIR. GREENE: So do all of us know as
5 land management agencies that if you hit that exposure
6 number, that is the number that you have to work with.
7 Because I -- I know there's an OSHA standard, but I keep
8 hearing -- so this --

9 JERE JOHNSON: The short answer is that there's
10 no number. There's no magic number. And the problem
11 is, again -- the state of California, for example, the
12 California Air Resources Board started with a number in
13 soil because they thought if they could start with that
14 number that they can manage from that. And what they
15 found out was that even -- even levels really low where
16 their soil number was -- could cause significant
17 exposures if it was airborne. The problem is, too, when
18 you're doing a soil sample, you're collecting this tiny,
19 tiny sample to look under the microscope and trying to
20 characterize it. If you get a chunk in there, you're
21 going to get a high level; if you miss it, you're not.
22 So the -- actually, the state of California and some of
23 the counties are trying to work on that. But there is
24 no magic number. If it were -- if there were, then it
25 would be -- this whole thing would be much more simple.

1 DEPUTY DIR. GREENE: So, therefore, when we look
2 at perhaps agriculture, that's why the farmers are so
3 concerned about this because nobody is really sure of
4 where that number is for the activity that may occur?

5 JERE JOHNSON: Yeah, I'm not familiar with the
6 agriculture concern. But, you know, it's -- I wish that
7 we could give the land management agencies something
8 more definitive to go on, but the fact of the matter
9 it's just not the nature of the exposure or the nature
10 of, you know, asbestos.

11 DEPUTY DIR. GREENE: And so, Dr. Nolan, I see
12 you sit right up when she was talking. Is that just --
13 you're adjusting your posture, or you're --

14 DR. ROBERT NOLAN: Actually, I wanted to ask
15 Mr. Cooper a question. Your employees are exposed to
16 asbestos in CCMA on a regular basis?

17 RICK COOPER: During -- during active management
18 of CCMA, as an OHV park, they are.

19 DR. ROBERT NOLAN: Now, do you consider the
20 asbestos PEL protective of your employees?

21 RICK COOPER: I guess I don't -- do not.

22 DR. ROBERT NOLAN: Okay. So you have a medical
23 monitoring program for your employees?

24 RICK COOPER: We do.

25 DR. ROBERT NOLAN: And what are the results of

1 that medical monitoring program?

2 RICK COOPER: Results in what respect?

3 DR. ROBERT NOLAN: I would assume that they're
4 giving them chest x-rays and pulmonary functions and
5 pleural plaques so if they cycstic fibrosis, they have
6 evidence of an asbestos-related disease. Well, you do
7 medical monitoring -- you must.

8 RICK COOPER: Yes. Yes, yes.

9 DR. ROBERT NOLAN: I would assume if you're
10 monitoring for asbestos exposure, you're monitoring to
11 see what their (unintelligible) evidence of
12 asbestos-related disease.

13 RICK COOPER: Thank you. Thank you, Doctor.
14 Very appreciative. My only hesitancy is just, you know,
15 reporting -- you know, making statements regarding
16 employees and medical health.

17 In general, though, you know, since I've been
18 here, there have been no employees with any
19 abnormalities associated with working in Clear Creek.

20 DR. ROBERT NOLAN: Thank you.

21 (Applause.)

22 CHAIR WILLARD: Okay. Well, we've got a lot of
23 public comments. Unfortunately it's getting late and
24 kind of about time for another break. I apologize for
25 everyone who wants to get a lot of comments in. We will

1 let you have your comments. But I hope this has been
2 worthwhile. I mean I think this has been great. So
3 thank you for sitting up here and taking the questions.

4 DEPUTY DIR. GREENE: Thank you so much.
5 Appreciate it.

6 (Applause.)

7 CHAIR WILLARD: Take another break.

8 (Brief recess.)

9 CHAIR WILLARD: Okay. Thank you.

10 So we're going to have public comment, and then
11 the Commission will discuss things and decide if there's
12 some action we want to take.

13 So we have a lot of comments here. And I
14 appreciate that there's a lot of passion and enthusiasm,
15 and you really want to get your thoughts out. But,
16 please, I'm going to have to stick to the time limits:
17 Two minutes for an individual; four minutes if you
18 represent an organization. But, please, in the interest
19 of giving time for everyone to speak and then us not
20 going too much longer than we want to, please try to
21 watch the clock up there. And when it turns red, that's
22 pretty much your cue to conclude. Thank you.

23 Ken Deeg, followed Justin Hensley, followed by
24 Margie Barrios.

25 KEN DEEG: Thank you, Commission. My name is

1 Ken Deeg.

2 I've been recreating in Clear Creek since about
3 1968. And there's two things I want you guys to all pay
4 attention to and take note: Integrity and credibility.
5 We're going to go from there.

6 On September 28th of 2009 and -- or 2005, the
7 28th and 29th on -- I'll start over. On September 28th
8 and 29th of 2005, the EPA came to Clear Creek along with
9 the Coast Guard Strike Team to do Dust Sampling testing.
10 Basically, as Jere said, it's all activity-driven
11 exposure risks collected in a similar matter.

12 So, basically, what we're doing here is we're
13 looking at photos taken the morning of the 28th of Clear
14 Creek Road just before Oak Flat but after the EPA's and
15 Cost Guard STRike Team's arrival at CCMA to do their
16 testing. And you can see the tractor marks that are on
17 the right side of the roadway. Keep in mind, this
18 roadway has actually been compacted with, I don't know,
19 hundreds of thousands of tons of gravel over the last
20 probably 50 years. If you look over here on the left
21 side of it, you'll see that -- you see the tire tracks
22 and marks where the vehicles entered. And a dozer looks
23 like it was unloaded here. A big truck parked over here
24 in the center of the roadway, backed off the trailer,
25 then driven over to the right side of the roadway where

1 it was nice and wide. And right about here, the dozer
2 starts scraping the ground, and you can see the dark
3 marks in the roadway where basically the blade was
4 dragging the roadway to soften it up. And you can see
5 the motorcyclists coming down the road, a little dust
6 cloud behind them. There's a little different view, a
7 little closer, same thing, the dozer marks and blade
8 marks and the rider. Lot's of dust in the back because
9 the road was softened by the dozer. Keep in mind, this
10 road's had so much gravel on it to control erosion and
11 to keep the vehicle traffic safety. Same thing on the
12 other side, closer (unintelligible) flat. Tractor
13 dozer track marks in the roadway here, blade marks here
14 going back, lots of dust. There guys are on the back.

15 Personally, I've been riding all my life. I'm
16 not going to ride in that kind dust trail; it's too darn
17 cloudy. You can't see. Doesn't make any common sense.
18 No sense at all.

19 Go ahead.

20 Same area, a little later in the day because you
21 can tell by the shadows. But keep in mind, if you
22 looked at all the riders so far, I think everybody's got
23 your vacuums on or your dust collection packs on.

24 Next.

25 Same thing, little closer view, basically all

1 the tractor marks, their dust-sampling stuff's on, their
2 backpacks, creating very soft conditions for lots of
3 dust. This is out in front of Oak Flat. Three ATVs in
4 a row coming out of the campground all with their
5 dust-sampling backpacks on. Basically, the way I read
6 the Vehicle Code, and probably there's some federal code
7 same way, it's a little fast coming out of the
8 campgrounds, considered not so good. Note that there's
9 a motorcycle rider in the back waiting in the wings.
10 Also, there's a water truck there that some people say
11 never existed there.

12 Anyway, same thing, roadway is nice and softened
13 up. See the tractor scrape marks, and everybody's on
14 the gas here, nice and tight riding together, creating a
15 cloud of dust in front of the campground with their
16 dust-sampling backpacks on. I'm also an ATV instructor
17 for my law enforcement agency. That is a little unsafe.

18 Next, please.

19 And there is a rider that was following or
20 waiting in the wings. Same thing, dust conditions, way
21 too dusty for the campground area. The campground right
22 there's got lots of gravel compacted in it to control
23 dust and erosion and keep the vehicles safe -- vehicle
24 traffic safe.

25 Next, please.

1 And, basically -- okay. Email dated March 4th,
2 2005, from BLM State Director Mike Pool to BLM
3 (unintelligible), "I've reviewed the Draft EPA findings.
4 At this stage I have not disputed the risk assessment to
5 human health. Remember this statement (unintelligible).

6 Next.

7 On this email, dated March 7th, 2005, from BLM
8 Field Command Director (unintelligible), paragraph,
9 Making a decision for closure. The minute
10 (unintelligible) comes out, gives the appearance that
11 BLM did not even take the time to consider the
12 (unintelligible)." Second paragraph, BLM will need to
13 close all county roads at Clear Creek Management Area to
14 effectively close and control access to the
15 (unintelligible) area. Not fully disclosing
16 (unintelligible) closure with (unintelligible) identify
17 the (unintelligible) and then two weeks closing Clear
18 Creek Road Management Area. (unintelligible) long-term
19 (unintelligible) and (unintelligible) stakeholders, yes,
20 sir. Thank you for your responses to forward your email
21 (unintelligible) February 8th, on March 17th, 2005,
22 regarding the options. This is well after the Henry
23 (unintelligible) basically called for, had several
24 issues with the EPA's report and providing several
25 options (unintelligible) here. Basically,

1 (unintelligible) later on. Emailed me (unintelligible)
2 later dated 4/11/2005 (unintelligible), Rick Cooper.
3 Rick, on the facts that we need a change in Commission
4 (unintelligible) that contains asbestos in the
5 environment at the Clear Creek Management Area. Some of
6 this information in the three-page handout
7 (unintelligible) stage 2 (unintelligible) asbestos
8 (unintelligible) for your health. I think the Bureau
9 needs (unintelligible) for Clear Creek original EPA
10 (unintelligible) in this process.

11 Next.

12 CHAIR WILLARD: Your time is up, please. If you
13 could, we need to conclude and move on.

14 KEN DEEG: Okay.

15 Next. Next.

16 Basically I'm going to start (unintelligible).
17 Basically, (unintelligible) on this May 29th, 2005,
18 (unintelligible) and no dust (unintelligible) issue
19 (unintelligible) And my daughter with a big happy face
20 because she's out doing what she loves.

21 CHAIR WILLARD: Justin Hensley, followed by
22 Margie Barrios, followed by Lupe Garza.

23 JUSTIN HENSLEY: Good evening. My name is
24 Justin Hensley, and I represent The Friends of Clear
25 Creek.

1 I had prepared a speech to give you. I was
2 going to squeak right in at my four-minute limit, but I
3 feel the need to deviate to hopefully shed some light on
4 a question that keeps coming up that I haven't heard an
5 answer to. The question being, why are the IERF -- the
6 new results so much different than the EPA results. I
7 think I can shine a little light on that subject. The
8 IERF or the new testing was done what was considered
9 under moist conditions. That seemed to be the general
10 consensus. So why did the EPA test moist results show
11 such higher levels than the new testing? The reason is,
12 I believe, is that the EPA never conducted tests under
13 actual moist conditions. They were there in the
14 beginning of November of '04, and they labeled that
15 session as moist. However, the very criteria that they
16 state that they used to determine soil and moisture
17 content, none of the samples during that testing session
18 met that criteria. All of the samples taken during the
19 November moist testing session actually met the criteria
20 to be dry. You should have received that handout. It's
21 Exhibit A. They state they used a methodology or
22 criteria developed by the U.S.D.A. You should have that
23 there. And if you look at all their samples from that
24 testing, not one met the criteria to be considered
25 moist. They were all dry. In fact, a third of those

1 samples were actually drier or had less moisture than
2 the dry-season testing in September of '05. Yeah, it
3 rained five days before. However, before that, it had
4 not rained in Clear Creek for 183 days. And as the BLM
5 and EPA both stated today, Clear Creek dries out really
6 quick. Some mentioned that it dries out even quick on
7 the first rain of the season. The place was as dry as a
8 bone. I'm not an expert. I'm not a toxicologist. I'm
9 a pilot. However, the BLM's own expert had stated the
10 same. And Kenny showed that email there. The BLM's
11 toxicologist stated that, in fact, the moist data was
12 not so moist and that it skewed the EPA's test results
13 towards dry conditions, and that subsequently the EPA
14 and the BLM don't know what the actual risks are. I
15 think we know now that we actually got some moist season
16 sampling. They're significantly lower as everyone
17 suspected.

18 So how did this affect the risk analysis? If
19 you take the -- the risk calculations for, say, the
20 adult motorcyclists, which most of us are here, the EPA
21 used 29 samples to calculate the -- the -- the mean
22 average for the adult motorcyclists. So 13 were from
23 dry season, 13 were from the moist season testing, and
24 3 were from the wet. Well, the moist season testing was
25 actually dry. So what you get is 26 dry samples and

1 3 wet. It's 89 percent dry. All the calculations were
2 done that way. Well, all the OHV calculations were done
3 in that way. Some of them as high as 95 percent. You
4 have that data there. It should be Exhibit B. I
5 believe the child ATV risk calculations are 95 percent
6 dry samples. This technique guaranteed failure. And
7 the BLM's own expert, their toxicologist, stated that he
8 agreed. However, his -- his concerns were ignored
9 because shortly thereafter the director of the BLM wrote
10 to the EPA and stated that this very toxicologist had no
11 concerns with the reports and that they were to go for a
12 closure -- or that they were to continue with the --
13 with the closure of Clear Creek.

14 I'm not a toxicologist but you have the numbers
15 there, all that data straight from the EPA report, and
16 this -- the EPA report was done in a fashion, I think,
17 that -- that guaranteed failure.

18 Thank you.

19 CHAIR WILLARD: Thank you.

20 Lupe Garza, followed by Butch Meyner.

21 Oh, you're up for -- okay. Yeah, for --

22 NICK HARRIS: I -- I realize that it's a
23 little --

24 CHAIR WILLARD: -- Ms. Barrios had to leave
25 early.

1 NICK HARRIS: Ms. Barrios left.

2 (Multiple speakers.)

3 NICK HARRIS: I figured I'd do hers and do mine
4 and get out of everyone's way.

5 (Multiple speakers.)

6 CHAIR WILLARD: Go right ahead.

7 NICK HARRIS: So Nick Harris for AMA, but on
8 this moment on behalf of Margie. She wanted me to say
9 speaking as an individual and not as an official
10 representative of the board of supervisors, her points
11 are basically that when the CCMA was closed to the
12 public, the economic recession that had started in early
13 2008 was already in full effect here in the county.
14 And, in fact, this county was being affected much more
15 than the rest of California. And as a result of the
16 closure, thousands that had visited the economy -- that
17 visited the local area had stopped coming, reducing
18 purchases of gas, food, lodging, groceries, et cetera.
19 Hollister Hills simply could not accommodate them all.
20 Per the BLM's recommendation, the board of supervisors
21 voted to close the county roads in the CCMA.
22 Fortunately, they unanimously chose to open them up by
23 the early part of 2009.

24 She says here we are three years later after the
25 closure, our county's in the top five of the most

1 stressed economic counties in the nation. All time high
2 unemployment, businesses closing, riders still not
3 allowed in the CCMA. She's very happy with this new
4 report and that it contradicts the earlier studies. She
5 basically says the CCMA needs to be re-opened or they
6 may be the last county to recover from this depressed
7 state of economic conditions that we are currently in.
8 The closure is simply unfair, unjust and unfounded.

9 (Applause.)

10 CHAIR WILLARD: Lupe Garza, followed by Butch
11 Meyner.

12 NICK HARRIS: I'll just knock mine out real
13 quick, and then you don't have to call me back. How's
14 that?

15 CHAIR WILLARD: Okay. Go right ahead.

16 NICK HARRIS: I'll think I -- real quickly.

17 Nick Harris, American Motorcyclists Association.

18 I did want to thank the Commission, thank all of
19 the experts that have taken up their time and traveled
20 far, I'm sure, and thank, of course, Daphne and the
21 Division for putting this together.

22 As many of you know, the Clear Creek area is
23 very important to our members, our riders. We've had
24 nationals there for many, many years. Families recreate
25 there; they grow up there. We've heard a lot of

1 testimony today, and I'm not going to try to rebut
2 various things, but I've heard some -- couple
3 interesting statements. The first one, the continued
4 lack of evidence of health effects. We know riders are
5 scouting the country looking for people that worked in
6 mines looking for, you know -- you see ads on TV,
7 shipyard workers. They can't find anyone. And, believe
8 me, people are looking. Maybe not the people we had
9 here today, but people have been looking, and we haven't
10 found anything. So I -- I've just heard that now for
11 five years, and I think it's very interesting.

12 We've also heard that there's no known
13 threshold, but yet we know that we're too high. And I
14 find that to be kind of -- just a hard -- you know, as a
15 layman, I don't quite get that, I guess. And I guess my
16 advice to all of us, to the BLM and everyone is we could
17 do our best to disclose the risks as best we know them
18 and allow people to make an informed decision for
19 themselves. My ATV has a sticker on it. The cigarette
20 pack Dave Pickett has in his pocket has a -- you know,
21 has -- has information on it, and we as adults, as
22 humans make decisions. We make decisions for our
23 families. And I just think that's the best option we
24 have because we're not going to get a simple answer on
25 this.

1 Thank you for your time.

2 CHAIR WILLARD: Lupe Garza, followed by Butch
3 Meyner.

4 LUPE GARZA: Hi, I want to say that I started
5 riding in Hollister -- I mean in Clear Creek ten years
6 ago. I have a diagnosis of a lung disease. Since then,
7 my doctors have said that -- they took me off the
8 transplant list in these last ten years, and they told
9 me in the beginning I had two years to live. But since
10 then I've, you know, got off the transplant list, went
11 onto different medications, and everything's helped.
12 They're so surprised that they want me to advocate for
13 other PPH -- people that are sick with lung disease.
14 I'm saying I've been going to Clear Creek for ten years
15 and gotten better. So I think that that kind of, you
16 know, disputes the health issue of, you know -- that
17 it's a lung, you know, cancer and whatever. But for ten
18 years -- and I have a recent MRI that says that I'm
19 doing nothing but getting better and getting better. So
20 it kind of disputes their -- their whole case.

21 So that's all I wanted to say. And thank you.

22 CHAIR WILLARD: Thank you.

23 Butch Meyner, followed by John Ortiz.

24 Butch Meyner -- M-e-y-n-e-r, it looks like.
25 Meyner.

1 Okay. John Ortiz, followed by Ron DeShazer.

2 JOHN ORTIZ: Hello. My name's John Ortiz. I
3 own Faultline Power Sports. We've got a store in
4 downtown Hollister, also a concessionaire for the state
5 up at Hollister Hills SVRA.

6 When -- when Clear Creek first closed a couple
7 years ago, at our downtown store it was like somebody
8 died. Business stopped for about two to three weeks.
9 There was nothing going on. Talking to some of the reps
10 that come into our stores and visit other motorcycle
11 shops from San Luis up to San Francisco, they said it
12 was a similar impact to all the area. Everybody was
13 just in shock. Nobody could believe that this -- it
14 finally happened.

15 When we first opened our store six and a half
16 years ago, we set our weekend hours specifically for the
17 Clear Creek riders. We open up at 7:00 in the morning,
18 and many weekends we were greeted in the parking lot as
19 we wer rolling in to open the store by people with their
20 trucks waiting for us to open up so that they could get
21 their last supplies before they head down there, lenses,
22 tear-offs, whatever else they would need, a pair of
23 gloves or something they left at home. Since then, we
24 still do a little bit of business early in morning, but
25 it's nothing like it was when -- when Clear Creek was

1 open.

2 Last year, the BLM had an economic impact
3 meeting here in Hollister to discuss how we've been
4 affected by the closure. They did it about two weeks
5 after the Ramblers had their race on their property.
6 And it was a real good reminder to us as far as how good
7 business was when Clear Creek was here. The race
8 weekend we sold out of all kinds of stuff. Again,
9 lenses, tear-offs, cables, chain lube, tires, tubes, all
10 kinds of stuff that people were loading up before they
11 went down -- down to Clear Creek.

12 Overall, since the -- since the closure, our
13 business has been down about 20 percent that we
14 attribute to the closure of Clear Creek. In that time
15 period, we've obviously had an economic downturn. Being
16 that we've got the two stores here, we kind of look at
17 the -- the decrease in business of Hollister Hills and
18 the decrease in business in our downtown store. I think
19 I can safely say that 20 percent is directly because of
20 the closure of Clear Creek.

21 And not only our business but obviously, as
22 other people have said, gas stations, restaurants,
23 Safeway, other businesses in town have been negatively
24 impacted by this closure. To mimic what Margie said,
25 according to the *Associated Press*, San Benito County is

1 the fifth most stressed county in the country. And that
2 takes into account unemployment, foreclosures, and
3 bankruptcies. Unemployment in this county is typically
4 in the high teens. Overall, the closure's had a
5 negative impact -- economic impact on not only
6 San Benito County but in the surrounding areas, also,
7 all the other stores in the surrounding areas that rely
8 on business for Clear Creek.

9 As you guys know, OHV is a good family activity,
10 and we need to get Clear Creek opened up again.

11 Thank you.

12 CHAIR WILLARD: Ron DeShazer, followed by Dee
13 Murphy, followed by Kevin Murphy.

14 RON DeSHAZER: Good day. Good afternoon. Good
15 evening. I'd like to thank the OHV Commission.

16 In the last year I got a chance to ride Gorman
17 down there on Interstate 5 and I realized why Clear
18 Creek closed -- was closed down by BLM. They can't
19 match the job you people do with off-road vehicle parks.
20 We had a blast. Why doesn't the California OHV take
21 over Clear Creek, and the BLM can take a hike.

22 One of the things you may see on your desk out
23 there, Renee and I brought some pictures off the
24 internet of Indian Hill and some of the surrounding
25 areas. Indian Hill was a nice smooth big hill. The

1 rainwater just, you know, drained off nice and happy.
2 On those photographs -- I'm sure there's some more extra
3 floating around here -- they chopped the living dickens
4 out of that hill. And that was during the dry season.
5 They created more rape of that property than a hundred
6 motorcycles in a hundred years. They improved the
7 hunters' staging areas just before you get to Clear
8 Creek with nice tables and sun shades and what -- I'm
9 going, "Hmm, nice." Condont Creek also had a brand-new
10 road put in it and a lot of little improvements. Clear
11 Creek, I don't know why, they pulled out bathrooms that
12 people need, even their own people. I'm not quite sure
13 exactly how they're handling that aspect of their day.
14 But if OHV takes over, let's dive in with a day-use fee
15 or a year or a camping fee, whatever it takes. Libby,
16 Montana -- remember that name, if you can -- Libby,
17 Montana, had a large copper mine. The big company hired
18 the EPA to come in and take a test. EPA -- I don't know
19 exactly how it worked out, but they said everything is
20 good, no health problems. To this day, over 200 people
21 have died in that area and over a thousand are sick.
22 That tells you somebody was bought off, somebody's
23 accuracy is really (unintelligible) right now,
24 especially with the people that were sitting at this
25 table having a urination contest between each other.

1 Couple things I'd like to say. Most of us have
2 to ride -- drive a car or a pickup five hours to find a
3 motorcycle riding area. The BLM baby-sat Clear Creek.
4 They tied the baby up and put it in a cage, and they
5 still get a \$40 check for doing nothing. That is theft.
6 It's -- I think it's deceitful. They put signs around
7 the KCAC Mine years ago. They didn't just do the mine;
8 they did the whole valley. They shut down the McCulloch
9 Canyon. They -- noticed earlier they were talking about
10 how the asbestos in certain areas up in the Sierras --
11 well, there's trees up in the Sierras, too. Isn't that
12 kind of a strange thing. I kind of see a strange
13 relationship to that. They're trying to sell shark
14 repellent to people who only have a back yard wading
15 pool. They're telling us about all these problems
16 that's going on at Clear Creek and how we're all going
17 to die. I've been riding at Clear Creek since 1971.
18 And I take big breaths with this big old chest of mine,
19 and I take soil samples with my big old mouth, too.

20 I'd like to remind them earlier today we did the
21 Pledge of Allegiance to that beautiful flag up there.
22 And what was the last words of that statement, "with
23 liberty and justice for all." BLM, you're out of here.
24 You did a bad job.

25 Thank you.

1 (Applause.)

2 CHAIR WILLARD: Dee Murphy, followed by Kevin
3 Murphy.

4 DEE MURPHY: Good evening. I am here to talk
5 about what OHV means to me. Off-road riding is my
6 favorite thing to do with my two teenage daughters.
7 I've been riding for 24 years. My family owns Zoom
8 Cycle, parts and accessory store in Santa Clara.

9 In May of 2008, the Hollister BLM closed Clear
10 Creek Managment with the help of the EPA. This was
11 mainly through untruths, deceit, and falsifications.
12 Clear Creek is a 70,000-acre off-roader's paradise.
13 Since May of 2008, our stores have had a monthly solid
14 sales loss of 30 to 35,000 per month, an average of
15 450,000 per year, times three is a \$1.3 million. So in
16 three years, that's what our store, one store, has lost.
17 With a 9.25 sales tax rate, that's a sales tax loss to
18 the state of California of 125,000, other tax fees,
19 about 30,000. That's a lot of money. My husband's
20 gross pay last year, and they think we're rich, \$19,000.
21 If I didn't work, I'd be on food stamps. I work, thank
22 God, for my girls.

23 Before May 2008, we had 17 to 21 employees. We
24 now have 5. We barely sell anything because Clear
25 Creek's closed, and that's who we served along with

1 John. Clear Creek's a mecca for off-roaders. They come
2 from all over. Over \$750,000 was spent in this county
3 alone. I know because I went around after Rick Cooper
4 here told us that he went around and had his employees
5 go around. I went to the other 75 businesses after he
6 only notified 21. We had that Economic Impact meeting
7 where they did show up. Last year -- and that was in
8 February. I found out that there were losses 10 to 58
9 percent sales loss here in San Benito County alone. I
10 went to 70 stores, gas stations, food. You name it, I
11 went to it. If we had so much as just one store that
12 had sales losses of almost 1.3 million, how does that
13 really affect the state of California. If anyone that
14 sells food, gas, supplies, Safeway -- you heard all of
15 them already -- if I lost a million point three in three
16 years, what of the stores here? I know, I own a house
17 here. I don't see nearly the amount of motorcyclists as
18 I do because they go to Hollister Hills, fills up, and
19 they go home. They don't need to eat in this store.
20 They don't need to buy anything. They bring it from
21 home, they turn around and they come on out and they go
22 home.

23 Over 14 percent of all California residents own
24 OHVs and pay their (unintelligible) to the green
25 sticker. That's about 1.3 million OHVs for California.

1 I have 11 of my own, two trucks, several trailers, and
2 take them all places. I pay over just \$600 every two
3 years just to register my OHV, not including the rest.
4 This with the other 1.3 million bikes is a large sum of
5 money. If the state wanted OHV parks closed, then no
6 one will have anywhere to ride because, of course, U.S.
7 Forest Service is also closing all the public land.

8 Sales tax right here in -- or up in Santa Clara
9 County are 9.25. Our sales loss is down about 500,000 a
10 year that it's lost to the state. That's 50,000 per
11 year just in state taxes we don't send to them. That's
12 150,000. I know that's about the same here, too. Their
13 rate is moved up. Almost 60 percent of all the Clear
14 Creek riders come from the South Bay area. I have
15 friends that drive from Bakersfield, Hanford, and
16 Santa Rosa. They'd meet us at least once a month down
17 there. Everyone brought gas, food from Hollister, and
18 then we'd return to town, we bought more gas and we'd
19 eat dinner, and then they'd head home. Now they just
20 head home; they don't need to stop because they can make
21 it all the way home or they eat on the way.

22 The only self-sufficient park system here in
23 California are the parks that are run by the State
24 Vehicular Recreation Association, Cal-OHV. It is beyond
25 reason that by taking money out of our self-employment

1 as a special tax with no General Fund money that goes
2 into it -- I called the California State Parks
3 Association and asked them, "How much money do you give
4 to the OHV if I join your club -- your association," and
5 they said, "None, because that's our fund." Instead of
6 letting the money in green sticker fees accumulate, we
7 OHV parks. They're right, we should buy Clear Creek,
8 that's what I think. Few other places, too.

9 Off-road use is for families. I take my girls
10 up. We see snakes, birds, pigs, everything.

11 Thank you. And thank you for coming to
12 Hollister. They needed it.

13 (Applause.)

14 CHAIR WILLARD: Kevin Murphy, followed by Adolfo
15 Garza. Kevin's not here?

16 DEE MURPHY: I have the pictures, also, that you
17 have up that you might --

18 CHAIR WILLARD: Adolfo Garza, followed by Ed
19 Tobin.

20 ADOLFO GARZA: Hi. My name's Adolfo Garza. I'm
21 an electrician by trade.

22 One of the questions -- I was out at Clear Creek
23 on Sunday. I saw those new campsites you gentlemen were
24 discussing earlier. However, I can tell they're not for
25 OHV use. I was wondering if our OHV money was used to

1 build non-OHV campsites.

2 Number two, I've been going to Clear Creek for a
3 long time now. My wife is Lupe, and she -- you know she
4 said she had a couple years to live. And we started
5 going and she got better. She's healthy. Like the lady
6 said, all kinds of friends come from all around, Modesto
7 and different places. We even had a friend come from
8 New York to ride at Clear Creek. We spend all our money
9 here. We come home. We patronize all the restaurants,
10 put a lot of money into the coffers.

11 You have a nice lady here, showed us all these
12 graphs and everything was real nice and -- it reminded
13 me of when I was young and I used to watch the show
14 called "Get Smart" show. And whenever the guy wanted to
15 get his way, he would say, "Well, would you believe?"
16 Well, come on, let's get smart, people, and give your
17 constituents, the American people, give us our lands
18 back.

19 Thank you.

20 CHAIR WILLARD: Adolfo Garza, followed by Ed
21 Tobin. That was -- I'm sorry. Ed Tobin, followed by
22 Ryan Chamberlin.

23 ED TOBIN: Thank you. My name is Ed Tobin. I'm
24 with the -- member of the Salinas Ramblers. And our
25 vice president has left, so I will speak on behalf of

1 the club.

2 I'd like to thank you on behalf of the Salinas
3 Ramblers for holding your meeting down here and for
4 pursuing this very important matter to all us
5 motorcyclists.

6 I'd like to point out that the Salinas Ramblers
7 were the riders that were a part of the Cooper study
8 back in the seventies. And I'm pleased to report that
9 all of them are doing well. They're old, you know.
10 They've got a lot of problems, but asbestos-related
11 disease is not one of them.

12 Also like to point out that that study was also
13 done during one of the worst droughts in California
14 history. So you have to put it in the context. It was
15 done during May when it was extremely dry for the past
16 year and a half before that with very low rain.

17 This whole EPA issue came about because of water
18 being tainted with asbestos in the L.A. drinking supply.
19 And so the EPA told us that if we clean up the Atlas
20 Mine, we could eliminate that problem. But I just saw a
21 news article that says that recent flooding in Clear
22 Creek was now going to flow into the aqueduct and get
23 into the L.A. drinking water supply 20 years later. But
24 don't worry, they're going to handle it with their
25 filters. So people in L.A. aren't at risk.

1 Oh, by the way, I'll be on the tour tomorrow.
2 If there's anything I say that you want to ask me about,
3 I'll be glad to talk to you tomorrow.

4 One of the comments -- I think Justin mentioned
5 dryness in the EPA sampling, and one of the things that
6 I saw as soon as I looked at their report was that all
7 their sampling was done at low elevations. Clear Creek
8 ranges, as Rick Cooper said, from 2,200 feet up to 5,200
9 feet. Most of the sampling was done at lower elevations
10 which normally would dry much quicker. As a matter of
11 that, the areas where they ran most of their tests, I
12 believe, is what we used for our wet weather course to
13 avoid snow during the enduros. So -- and I'll talk
14 about that with you tomorrow. I think if you read the
15 EPA study you'll see in the EPA study that their
16 directive to the riders was to ride in the dust cloud of
17 the rider in front of them not, as Jere said earlier,
18 that they would keep spacing, and not as the way that
19 Dr. Nolan and his team actually conducted their study.

20 And so finally, Kane brought up -- Commissioner
21 Silverberg brought up a question about the OSHA study
22 that was done by BLM. It was actually turned into --
23 I'm sorry, a motion study -- it was done by BLM, it was
24 turned in to OSHA the same month that they closed Clear
25 Creek. And I think if you take a look at that, their

1 toxicologist who put the report together tried to give
2 the OSHA folks a representative picture of the PEL --
3 you know, Personal Exposure Limit, based upon the Risk
4 Analysis that the EPA had done. And if you looked at
5 their report and the chart in there, it actually shows
6 work days to reach the 1 in 10,000 level. And in that
7 report, one of the things that they characterize is OHV
8 riding. You know, it's OHV patrol, which I'm very
9 familiar with because I did a lot of it along
10 with the ranger down there at Clear Creek. And
11 according to their report, it would take 44 days of OHV
12 riding to reach the Personal Exposure Limit using the
13 Risk Analysis methodology that the EPA used in their
14 study. And so that's why Rick Cooper, I don't believe,
15 wants to discuss this because it's so dramatically
16 different and much more in line with what Dr. Nolan came
17 up with.

18 Thank you very much.

19 CHAIR WILLARD: Ryan Chamberlin, followed Ray
20 Iddings. Okay. And Ryan Chamberlin is not here. All
21 right. Ed Waldheim, I know he's here. Followed by Dave
22 Pickett.

23 ED WALDHEIM: Ed Waldheim, California Trail
24 Users Coalition.

25 Ed Tobin has been at this as long as I can

1 remember. I started in 1978 working on issues with
2 land-use issues. And it's hard to believe that here
3 we've come and we are still fighting these issues.

4 The Bureau of Land Management for some bloody
5 reason doesn't understand that the public lands are for
6 the public; they're not just for little interest groups.
7 And that because of that, the socioeconomic and the
8 engine that runs all the business in California are
9 directly related to the opportunity that we have on the
10 public lands. And systematically as they closed Clear
11 Creek, as they're trying to do with the SRPs, the
12 Special Recreation Permit in the desert, they keep on
13 locking and closing and closing and closing. And they
14 don't even seem to take any -- they don't care. And it
15 just boggles the mind.

16 Clear Creek should have never been closed.
17 We're putting millions of dollars in Clear Creek. Are
18 we going to get our money back? I mean normally in
19 business when you give somebody money, you have some
20 expectations for a return. But the Bureau of Land
21 Management, they're just totally ignorant. They're just
22 actually thumbing their nose at us and says, Who cares?
23 In fact, they don't even show up up here -- management
24 doesn't show up here. I'm sorry, I don't have to invite
25 them to come here. They get money from us. You would

1 think sensibly that it would realize and say, Hey, I'm
2 getting money from these guys. I should show up and
3 tell them what I'm doing or what my staff is doing. But
4 no, they don't even bother coming. That ought to tell
5 you something of the Bureau of Land Management.

6 So somewhere along the line we have to look --
7 the Coopers of the world, the Sokols (phonetic) of the
8 world, the Abbotts of the world, the management of
9 Bureau of Land Management -- the user public deserves to
10 have recreational opportunities. They have to be
11 reasonable. They have to stay on the designated trails.
12 I'm the first one to shoot the first guy I can if I
13 catch him off the trail. But we have to provide the
14 opportunity. And to close this area for some bogus
15 studies -- put a little mask on your mouth. You paint
16 your house, what do you do? You put a mask on your nose
17 so you don't get fumes in there. The few hours that you
18 spend on a motorcycle, give me a break. Everybody knows
19 you stay away from the dust. You don't run into
20 somebody's dust. Stay behind it. It's common sense.
21 It's something that could be mitigated. But if we sat
22 down and reasonably go through this, Clear Creek should
23 be open. We've gone through a management plan not once,
24 not twice, three times. When I was on the commission,
25 man, rah, rah, rah. We were going to go buy the Martin

1 Ranch. We got scared and I made the motion to not buy
2 that beautiful ranch because the people in Los Angeles
3 started complaining, Well, you're going to get us
4 pesticide into the aqueduct, and so we backed off. That
5 was the worst decision I ever made when I was on the
6 commission. I should have never done it. We should
7 have had that ranch. Today it could have been an SVRA.
8 So it's one of those decisions you get kind of scared.
9 But there's no reason for that.

10 You have a study here that was presented to you.
11 You have some good data. Let's move forward and open
12 Clear Creek and push the government to do it. If it has
13 to be taken up to congress, well, by God, let's go ahead
14 to congress and open Clear Creek up again.

15 CHAIR WILLARD: Dave Pickett, followed by Tom
16 Tammone.

17 DAVE PICKETT: Been a long day, folks. Dave
18 Pickett, District 36.

19 This issue is very emotional to people that are
20 in this building and the thousands who can't be here and
21 they're counting on us to speak for them.

22 The testimony today that came out said a lot
23 with few words. I heard there's no magic number. I
24 heard it multiple times. I heard there's no threshold
25 that has been identified. I also heard that cases of

1 illness is very, very rare, 300 in an entire state of
2 37 million. I heard the socioeconomic impact that is
3 hurting people, people that make their living in this
4 area. I have not seen a smoking gun as presented by
5 people that have way more education and experience than
6 I have. Yet I didn't hear one thing that said that it's
7 unhealthy to go down there. It's based on theory. It's
8 not based on hard science. There is dispute among these
9 academics that argued with each other with long
10 histories about what can cause this type of cancer or
11 amphibole-directed mesothelioma. And I have a problem
12 with public land being shut down based on theory.
13 Where's the science? I didn't hear it today. Yes, I
14 guess if I go down and just start chewing the dirt down
15 there for hours and hours and hours I'm going to have
16 something happen. But when I read that the impact is
17 that of smoking one cigarette in one year, what are we
18 even doing talking about it. BLM has made a huge
19 mistake based on information supplied to them by the
20 Environmental Protection Agency. The EPA says they have
21 a mission statement, to protect public health and the
22 environment. In this case, I think they have turned it
23 around, and they're saying to protect the environment by
24 shutting down public land.

25 Thank you.

1 CHAIR WILLARD: Tom Tammone, followed by Steve
2 Agoirne.

3 TOM TAMMONE: Thank you and good evening. I'm
4 Tom Tammone.

5 First of all, as Dave Pickett said, we're always
6 talking about theory. That's all. And why is it the
7 default position every time somebody comes up with a
8 theory that could be (unintelligible), well, it's
9 perhaps the EPA just hates cars or is car -- was putting
10 out some propaganda one time, well, all motorcycles can
11 produce up to 118 times pollutants -- I don't know what
12 car they compared it to. But as far as I'm concerned,
13 it's just rhetoric. They hate cars. And you take that
14 into consideration and even more so they hate
15 motorcycles. Anything they can do to your motorcycle,
16 parked in the garage, not running, I'm sure is fine with
17 them. But why is the default position every time
18 somebody comes up with a theory we've got to spend all
19 our OHV money, you know, and other resources to go out
20 and disprove it. Maybe they should do it the other way
21 around. We have a right to ride until someone proves
22 there's a problem. It's our choice. This is America.
23 We have the right to pursue life, liberty and happiness.
24 It's in the Declaration of Independence.

25 And I do appreciate you guys coming before us

1 and giving us all this information, as hard as it is to
2 adjust. But also what I'm saying, to comment on some of
3 the previous agenda items, but the same thing applies.
4 I like information. And as far as any political person,
5 the governor or (unintelligible) or senator, president,
6 if you want my support on any ballot items as a voter,
7 having once a month your staff, yourself, or having an
8 appointee say, "It's confidential. I'm sorry, I can't
9 tell you" is not going to get it.

10 Thank you.

11 CHAIR WILLARD: Steve Agoirne -- I hope I got
12 that right. It's -- okay. Great. Terry Pederson,
13 followed by Mike Evans.

14 TERRY PEDERSON: Yeah, I'm Terry Pederson with
15 the Timekeepers Motorcycle Club. We've been putting on
16 events down at Clear Creek for 25 years now.

17 You guys have heard a lot of information on
18 theory today. You've heard two different studies. The
19 NEPA requires the government to build on all old
20 studies. You really should take a look at the original
21 PTI study. In my opinion, that is the most objective
22 and thorough of the three studies out there, and it more
23 agrees with the last study. It also talks about the
24 miners and millwrights that were in really heavy dusty
25 environments in their mills and see what the results of

1 that are. Basically, most of these studies show that
2 there's really not a problem down there. What you heard
3 is all theory. Let's get down to statistically
4 significant facts. As Rick Cooper put out or stated
5 earlier, Clear Creek has been used for mining since the
6 1850s. So we've got 150 years of evidence from Clear
7 Creek. Ever seen when they're out logging, getting the
8 wood that's around their smelters and stuff? It's in
9 their interior creek. They basically decimated the
10 entire forest at that time. You also had all the people
11 from the mills, the ACEC Mine. So there's 150 years of
12 data, and you've got no statistically significant data
13 on sickness or death. As a matter of fact, they can't
14 point out a single incident where somebody's got sick or
15 died.

16 So the basic facts don't match the data the EPA
17 is using which are probably based on the Libby Montana
18 mine which is a highly -- a much more toxic environment.
19 So we're closing an area that should not be closed due
20 to facts that don't match the on-the-ground statistics.

21 Rick Cooper also made a statement today to you
22 that I believe is totally wrong. He said they put water
23 on the roads when they graded the roads out there. I'm
24 sorry, I personally saw those roads after they were
25 graded; they were totally silty. They did not use water

1 this last summer when they graded those roads.

2 So thank you.

3 CHAIR WILLARD: Mike Evans, followed by Richard
4 Gallagher.

5 MIKE EVANS: Yeah, hi. Mike Evans.

6 I had the comment about the kids earlier. The
7 information that they used for the children riding the
8 CCMA, they're using the children as an excuse, one of
9 the main excuses to pull at the hearts of people to
10 close the CCMA, you know, believe their study of the
11 exposure to children. It's probably the most skewed.
12 They used adults riding adult motorcycles. I have kids.
13 I ride with kids. My friends have kids. It's a family
14 sport. It's what we do.

15 Your typical speeds on a child's motorcycle, a
16 very small -- they have very small wheels. You're going
17 about 5 miles an hour. I actually can't ride with my
18 kids on my motorcycle because it will stall out at that
19 low speed. I have a hard time feathering the clutch and
20 keeping up with him. So I ride a small bike as well.
21 The dust is -- I would put it in with hiking not
22 motorcycle riding. It's very slow. And I think if they
23 did an appropriate study that was scientifically based
24 on how people actually recreate, it would show that the
25 risk was substantially lower and possibly zero.

1 Thank you.

2 CHAIR WILLARD: Richard Gallagher, followed by
3 Randy Johnson. Okay. Andy Bajka.

4 UNIDENTIFIED SPEAKER: All right, guys. I'm
5 going to talk to you.

6 CHAIR WILLARD: State your name, please.

7 UNIDENTIFIED SPEAKER: My name is "any rider."

8 I've been riding at Clear Creek for 40 years.
9 My family's been riding there. We had a great time.
10 The place was wide open. Everybody took care of the
11 place. Then the trouble started. Fences up, bathrooms
12 went in, tickets, on and on. Okay? Area's being closed
13 up the primrose, the erosion, so on and so forth.
14 They've been trying to close that place forever. Has
15 nothing to do with the EPA or anything like that. It's
16 just they're trying to get us out of there. Okay? We
17 want to ride there. We know the danger about riding
18 motorcycles. We know all about that. We're just tired
19 of this. I'm just any rider. I just want to ride
20 there, like anybody else. We don't want any trouble.
21 We take care of the place. I go there now, I look at
22 the erosion, it's worse because nobody's riding there.
23 The plants are healthy. Everything's fine whether we're
24 riding there or we're not. So I'm just asking you guys,
25 please re-open that place and give us our life back.

1 Thank you.

2 UNIDENTIFIED SPEAKER: Good evening,
3 Commissioners. I really appreciate you having the
4 meeting down here for most of us, you know, to have this
5 opportunity.

6 Thank you, Daphne. You're the best advocate our
7 sport could have.

8 (Applause.)

9 UNIDENTIFIED SPEAKER: And I thank EPA, BLM and
10 our friends from Harvard.

11 I just want a little -- put a little context
12 into the EPA report. Maybe this is information more
13 useful to Mr. Cooper. On the IRIS's summary page, the
14 EPA's risk value for asbestos, they state that under no
15 circumstances are they to use -- is anyone to use a
16 method other than PCM directly with this IRIS Risk Unit,
17 yet EPA has used, you know, what they call PCME, which
18 is TEM, you know, with modified counting rules to try to
19 replicate PCM. There are two studies, a 1992 PPI Study
20 and the 2008 Department of Interior, Office of
21 Occupational Health Study. Between those two, they
22 have -- there were approximately, I think, about
23 14 samples that were analyzed by both PCM and TEM and
24 converted to PCME. And in those cases, the average
25 difference in those was 3.75 PCM fibers for every fiber

1 detected by PC -- I'm sorry, you've got 3.75 PCME fibers
2 per each PCM fiber. So this suggests that fiber count
3 by about 3.75. Superfund guidance suggests that
4 whenever possible, any site-specific information should
5 be used in the analysis of the risk of those sites. And
6 this is very site specific.

7 Regarding the high risk of itself, I followed
8 the trail of information as best I could from the EPA
9 site and it brought me to a document -- EPA document
10 from Dr. Nicholson from 1986. And they had
11 14 epidemiological studies that they wanted to
12 incorporate for the Risk Unit. Three of those were
13 asbestos -- sorry -- isotile mining and milling studies.
14 And it turns out that the -- there was still risk with
15 those studies, but it was one to two orders of magnitude
16 lower than occupational asbestos risk. So based on
17 that, they -- he realized that if they included these
18 three studies with the remaining 11, they were so low
19 that it drove the risk unit down by 40 percent, and then
20 they were worried that it would not be protective enough
21 for occupational workers. So they excluded completely
22 from the Risk Unit asbestos chrysotile mining and
23 milling. But now they're basically applying this Risk
24 Unit, which is exclusive of chrysotile mining and
25 milling, to CCMA, which is probably -- when you look at

1 a surface chrysotile mine and OHV on a chrysotile
2 deposit, it's probably very similar. Sorry.

3 And the only other thing I wanted to point
4 out --

5 CHAIR WILLARD: Please finish up.

6 UNIDENTIFIED SPEAKER: Okay. To be pretty fast,
7 the only calculation that Jere has mentioned and
8 suggested there could be as high as 2 in 100, that's the
9 counting EPA method is to take total fibers and divide
10 by 320 and multiply by their risk unit. And EPA just
11 took PCME fibers and multiplied directly by that risk
12 unit. If you were to take the total fibers from the
13 EPA's study, divide by 320 and multiply by -- times the
14 risk unit, it's far lower than anything close to 2
15 in 100.

16 So thank you.

17 CHAIR WILLARD: Bruce Brazil, followed by Amy
18 Granat.

19 BRUCE BRAZIL: Good evening. And it's probably
20 the first Commission meeting where I've had to say good
21 evening instead of good morning or good afternoon.
22 Bruce Brazil, California Enduro Riders Association.

23 I think we've all established between the panel
24 here, from the other public comments, that there is a
25 problem. Seems to be coming to a conclusion between the

1 two factions or the two different reports. And I'm one
2 that likes to look for solutions now that the problem's
3 been identified. And one solution, apparently -- or
4 possibly is litigation. I don't think anyone really
5 wants to have to go through that. Another -- maybe less
6 timely but maybe a more favorable option will be when it
7 becomes appeals times after the Final EIS is submitted.
8 And the appeals process, as far as I read it, we will
9 have the opportunity to make comments to the Council on
10 Environmental Quality.

11 Now, for those of you here that aren't familiar
12 with them, I've been able to read on the organization
13 within the federal government. So they will be looking
14 at it -- instead of being one of the agencies that wrote
15 the report, it will be an independent agency. And
16 during the appeals time, other agencies and the public
17 may submit written comments to Council on Environmental
18 Quality. Then the CEQ may publish findings and
19 recommendations or mediate between the disputing
20 agencies or hold public meetings or hearings, refer
21 irreconcilable disputes to the Executive Office of the
22 President for action.

23 So all is not lost, folks. We do have other
24 avenues to go through more of an independent government
25 agency than having the one that wrote the report review

1 the report.

2 Thank you.

3 CHAIR WILLARD: Amy Granat.

4 AMY GRANAT: I'm technically deficient. My
5 apologies. My name is Amy Granat on behalf of the
6 California Association of Four-Wheel Drive Clubs. And I
7 really want to thank all of you for staying so late, for
8 being interested in it and -- the subject, and I want to
9 thank Daphne and the Division for initiating the study
10 and the review of the information, and most of all I
11 want to thank everybody who came here.

12 What you're seeing is a large group of people
13 who are passionate about what they do. Whenever you see
14 that and you see this much passion asking the Commission
15 to do something, you have to ask yourself, is it
16 warranted? Why are they asking this? And the one
17 conclusion that I keep on coming to is that there's
18 something that doesn't make sense. Because if all the
19 pieces of the puzzle fit together, you wouldn't see this
20 many people, members of the public come here and
21 passionately ask you to help them re-open an area. The
22 problem is the pieces of the puzzle don't fit together.
23 There's a large amount of uncertainty.

24 With the scientists, with all due respect, they
25 were talking about many things I don't completely

1 understand. The one thing I did understand is that
2 there isn't a conclusive way to measure the risk. There
3 isn't a conclusive way to measure what exactly is going
4 on in Clear Creek. The only thing we have to hang our
5 hats on is the actual evidence. And the actual evidence
6 does not support what the BLM is trying to do. And I'm
7 not one for conspiracy theories, but I do remember a
8 long time ago before Mr. Cooper was at Hollister that I
9 was told that the BLM was looking to close Clear Creek
10 because they couldn't afford to keep it open, that the
11 act of keeping open the trails to that many visitors'
12 view was costing them more money than they were getting,
13 more money than they had in their budget. I don't know
14 if it's true. I'll -- I'll put it out there as a
15 possibility. But you cannot in any scientific way using
16 an uncertain principle as a land-use plan -- you can't
17 take what is not scientifically proven and then base a
18 land-use plan around it, I guess is what I'm trying to
19 say. And I would really ask the BLM to look at this
20 very, very carefully and say, Is this what they want to
21 use as the basis of a closure plan for Clear Creek? Do
22 you really want to use a plan that be -- a report from
23 the EPA that can be so easily contradicted? To me, that
24 just doesn't make sense.

25 The question is what can we all do? And I think

1 these people are advocating the best that they can. I
2 ask the Commission to advocate the best that they can.
3 You can at least get the proper science in place so
4 those pieces of the puzzle fit together. And I ask that
5 BLM to really re-consider this closure plan based on
6 what looks like a very broad study.

7 Thank you very much.

8 CHAIR WILLARD: Okay. I want to thank the
9 public for all your comments. There's some very
10 insightful statements, and that was very helpful for the
11 Commission to hear them. Now what we'll do is the
12 Commission will discuss the issue and see if there's a
13 motion for an action. There may or not may be. But I
14 think we should just sort of discuss it and see where it
15 leads us.

16 I'll kick it off.

17 Okay. Great. You had a quick question?

18 (Unintelligible audience participation.)

19 CHAIR WILLARD: Thank you.

20 Okay. Very interesting day. Learned a lot,
21 probably a lot more than we need to ever know about
22 asbestos and what risks there may be or may not be.

23 I'm inclined to believe that this is a situation
24 where employees of the EPA are only acting in good
25 faith. They're trying to fulfill their mission of

1 protecting the public's health, which is an excellent
2 mission, I think one that we all want to see them
3 continue to carry out. And I've been five years now on
4 the Commission, and during those five years I've always
5 thought the BLM was an excellent partner of the OHV
6 Division. We've been involved with a lot of different
7 projects over the years, and I thought that they've been
8 a great agency for Division to work with.

9 However, in this instance, I've got a bad sense
10 that a full closure of Clear Creek is the wrong thing.

11 (Applause.)

12 CHAIR WILLARD: And I want to make sure that you
13 know that I basically have an open mind on this. I
14 really have. I mean I'm not a dirt-bike rider. And
15 this is very important. We're dealing with lots of
16 people's health. And I don't want to make a decision
17 that might cause someone to suffer some disease later
18 on. So, yeah, I'm taking this seriously. Because
19 people can find other ways to recreate. Clear Creek
20 isn't the only spot in the world or even this area where
21 people can find to recreate.

22 (Unintelligible audience participation.)

23 CHAIR WILLARD: Well, I know it's getting kind
24 of scarce, but that's another issue.

25 But I do think that there's a really good

1 opportunity for compromise here. And that's what this
2 country is based on is continual compromise. And
3 unfortunately right now in Washington and at the state
4 capitol, we seem to be at gridlock and we can't
5 compromise. And so I'm really hopeful that out of this
6 situation both sides can look at the other's opinions
7 and come to some agreement on a compromise that works,
8 that tries to mitigate the risks, whatever they may be,
9 to protect the public's health, but at the same time
10 offers the recreational opportunity that these people
11 here so desperately want to maintain.

12 So I think that that's what we would try to be a
13 catalyst perhaps is to help come to some determination
14 of what a compromise might be. And that's my hope.

15 UNIDENTIFIED SPEAKER: We tried that.

16 CHAIR WILLARD: Well, we're going to keep
17 trying. We're not done with the process. Okay? So
18 let's not give up.

19 (Unintelligible audience participation.)

20 CHAIR WILLARD: Okay. The public's had their
21 time to comment, and the Commission is going to
22 deliberate, and then we're going to take action,
23 potentially. But, please, no more comments. It's just
24 not helpful for the stenographer. She doesn't know
25 who's talking. And it's not helpful for us. It's just

1 delaying things. Thank you.

2 And the other aspect of this that bothers me is
3 individual freedom, which is one of the cornerstones of
4 this country. And I, for one, am always -- it's sort of
5 rubs me the wrong way when government, trying to do the
6 right thing, trying to protect us but seems to erode our
7 individual freedoms. And, to me, this seems like one
8 of those situations where the government is trying to
9 protect us, but it's doing that at the expense of
10 individual freedom. The people that ride out there,
11 they're intelligent, they're grown-ups. They can make
12 up their own minds. They can read any kind of a hazard
13 warning sign that might be posted there, and they can
14 make up their own mind on whether or not they want to
15 take that risk. Children, that might be a different
16 issue and maybe there's a different way to handle that.

17 But I just think that we have to try to come to
18 some way of working out a compromise where those people
19 that want to recreate there can recreate there in an
20 appropriate manner under circumstances that try to
21 mitigate risk. For instance, we've heard the soil's
22 moisture content eliminates or minimizes the amount of
23 dust and asbestos that's in the air. So it seems to me
24 that having riding areas or riding times that are more
25 appropriate relative to the content of moisture in the

1 soil might be one way of mitigating the risk. And I
2 don't know if that's working around the calendar or
3 maybe there's a monitoring program that watches the
4 actual moisture content in the soil that then allows
5 people to ride.

6 Another thing is the time frame that people are
7 exposed. So we've heard about the studies being done
8 where it was assumed that it was five days a year at
9 eight hours per day. Well, maybe a program is set up
10 where riders register and they get a card and they come
11 in the front gate and they get their card punched. And
12 once they get through so many hours of riding, then
13 they're done for that year at Clear Creek. I mean
14 that's a way of, again, trying to come to a compromise,
15 trying to mitigate the risk that is perceived by the EPA
16 and BLM to still allow people to recreate.

17 Maybe there's a requirement for a short course
18 at the beginning of the season where in order to get
19 your card you've got to listen to an hour presentation
20 or maybe it's two hours on proper riding technique in
21 this environment. I mean we've heard about the trailing
22 rider perhaps having more exposure. Maybe the trailing
23 rider should fall back and not be riding in the lead
24 rider's dust. And so maybe some sort of an educational
25 program could help to, again, mitigate the risk. I mean

1 these are just some simple ideas I've come up with just
2 sitting here. And I'm sure that there's far smarter
3 people than me could put some time to it and we could
4 come up with a program that perhaps Division can work
5 with BLM to come up with a solution that's a compromise
6 that mitigates the risk and allows people to ride.

7 That's my thoughts on it.

8 Commissioners?

9 Commissioner Van Velsor.

10 COMMISSIONER VAN VELSOR: Yeah, this is
11 definitely a difficult issue. I am not from this
12 community. I've never been to Clear Creek so I don't
13 have the ownership that you folks do, that the OHV
14 community does, the people who have actually ridden
15 there for many, many years. And I can understand
16 there's a great deal of passion and interest in
17 maintaining that. I certainly don't envy Mr. Cooper's
18 position. He will have to make the ultimate decision.
19 The Bureau of Land Management has the ultimate
20 responsibility for the consequences and the potential
21 liability for the consequences based on the decision
22 they make.

23 We in our society come from a tradition and a
24 legal basis for making our decisions around public land
25 management based on the best available science. I'd

1 like to think that when I'm involved in making a
2 decision or being involved in the decision -- in this
3 case, we're not making the decision; we really don't
4 have the responsibility, the BLM does. But we will have
5 some influence over that decision if we do something
6 today to suggest a particular direction.

7 So as a result, I feel that it's important for
8 me to look at this from the standpoint of what I believe
9 is going to be a situation that's going to put people in
10 unhealthy, unnecessary risk situations. I think that
11 the government does have a responsibility to provide for
12 public health. True, I think that people should be
13 responsible for their own health, that they know the
14 risks. And they take those risks in a lot of
15 situations. However, I think that when we make these
16 decisions as it relates to children, it's a different
17 situation because children do not have the knowledge and
18 the developmental situation to make a good decision
19 based on a rationale process evaluating all of the
20 different risks that may be associated with it.

21 So for me, I need to look at this from the
22 standpoint of what is the best available science out
23 there at the present time. There's a lot uncertainty.
24 We've seen three or four different studies over time
25 that are showing different levels of toxicity. However,

1 when you're looking at science, you have to think of it
2 from the standpoint of probability. We're never going
3 to necessarily get the real truth. We're never going to
4 find for sure the answer. We have to base it on what's
5 the probability of some impact. And based on what I'm
6 hearing from the EPA, there is a fairly high probability
7 of potential risk exposure to children from
8 participation in this area as a recreational rider.

9 There's a need for additional study because
10 there is uncertainty. There's other studies that are
11 not showing the same thing as the EPA's study showing.
12 So I think there's a need to continue to evaluate. But
13 at this point in time, based on what we are seeing, it
14 would be difficult for me to support opening the area up
15 for riding unless there's some significant assurance, I
16 think, that we could do it in a way that there would not
17 be that level of risk that would be unacceptable in
18 particular for children riding in the area.

19 So I'm still concerned. I have to say I'm still
20 concerned based on what I've heard today.

21 CHAIR WILLARD: Commissioner Silverberg.

22 COMMISSIONER SILVERBERG: As Commissioner Van
23 Velsor has mentioned, from today's meeting, I would
24 guess that most of us in here can certainly say there's
25 enough information to realize that we have an issue at

1 hand. And I think it sort of falls into this: On
2 March 9th, 2009, President Obama issued a memorandum on
3 scientific integrity underscoring that the public must
4 be able to trust the science and the scientific process
5 in forming public policy decisions. And there were also
6 follow-up memos from the EPA Administrator Lisa Jackson
7 and the Interior Secretary Ken Salazar. We need to
8 foster honesty and credibility in science conducted by
9 the agencies. And so given that, it seems like there is
10 a shadow of a doubt on what's going on here. And I mean
11 as a Commission, I can't imagine that we would -- as a
12 Commission, it would seem like we need to figure out a
13 way to get more information and have the decision makers
14 involved potentially with the information that we
15 already have at hand and to make sure that the integrity
16 of this information is bulletproof before any decisions
17 are made.

18 CHAIR WILLARD: Commissioner Lueder.

19 COMMISSIONER LUEDER: To carry that thought
20 forward a little bit, one of the things that we haven't
21 talked about today is the standard of our public trust.
22 And in this whole discussion and all the studies and
23 reports and everything, I don't feel comfortable that
24 the public trust has been met. It's something that --
25 my grandfather had asbestosis, and he got it from

1 working in the shipyards. So I take it seriously. And
2 I think everybody in this room takes it seriously. And
3 all of us that have children take it seriously. But I
4 think the main thing is is that there should be a
5 standard of public trust that's maintained by the
6 agencies involved. And I don't think they've met that
7 standard, in my view. And we have scientists that are
8 world-renowned saying, Wait a minute. We looked at it
9 and we have a vastly different opinion. So that
10 seriously concerns me.

11 So at this point, I have a thought on a motion,
12 but I'd like to yield the floor until all of the
13 Commissioners have had a chance to comment.

14 CHAIR WILLARD: Commissioner Franklin.

15 COMMISSIONER FRANKLIN: Yes, thank you.

16 Well, thank you to the BLM, EPA, and IERF for
17 showing up and sitting on a panel. It was uncomfortable
18 at times for them, I'm sure, but it was important. This
19 is a very emotionally charged issue with dealing with
20 people's very limited recreation time, the livelihoods
21 of many that we've heard from. And whether we move
22 forward and have this addressed as a seasonal-use issue,
23 a two-track versus single-track issue, an
24 age-appropriate issue, the number-of-days-of-use issue,
25 I'm not really sure. That's for other people to fight

1 it out. But what I am sure of is that we have several
2 different studies here that vastly contradict each
3 other. And I would think that we would need to take the
4 time to find out exactly why these are so much different
5 than move forward with this. I'm sure that we could
6 find a way to work out some type of reasonable use
7 of the Clear Creek Management Area and hopefully attempt
8 to satisfy all. I think it's an area that's been used
9 for a long time for a certain purpose, and there's no
10 reason that that shouldn't continue on. And if it's
11 necessary, I think we should be able to continue using
12 the area while we continue to study the issue.

13 CHAIR WILLARD: Commissioner Slavik.

14 COMMISSIONER SLAVIK: Okay. My two cents is I
15 think we should leave nothing off the table on this
16 situation: Land swaps, alternative uses of the land.
17 There's really nothing that we should not take off the
18 table in this discussion. I hope the discussion doesn't
19 end here. And that, Mr. Cooper, I'm sure that you've
20 sat through these meetings a lot and hard in the past,
21 but this seems a special day. And I hope this sits well
22 with you and you have a lot of reflective moments about
23 what your decision's going to be in the end.

24 Thank you for being here.

25 CHAIR WILLARD: Do we have a motion to

1 entertain?

2 COMMISSIONER LUEDER: I'll attempt to put a
3 motion together. And this might be quite a mouthful, so
4 I'm going to try and work through it.

5 So representing the public as the Commission, I
6 believe the Commission should work on a letter to the
7 U.S. House Natural Resources Committee, Senate Energy
8 and Natural Resources Committee, the Senate
9 Environmental and Public Works Committee, the House
10 Science, Space and Technology Committee, with copies to
11 Secretary Salazar and Director Abbott voicing our
12 serious concerns on behalf of the public about the
13 scientific integrity of the 2008 EPA Study and the
14 decisions that BLM has put forth in their documents
15 which are being considered for a Record of Decision at
16 some future date which Mr. Cooper had elaborated on
17 before.

18 So that's my motion is that we develop a letter
19 to those bodies.

20 CHAIR WILLARD: And then the contents of the
21 letter, again, would be --

22 COMMISSIONER LUEDER: Basically, voicing our
23 concerns about the scientific integrity and requesting
24 further investigation by whatever bodies those
25 subcommittees and committees deem appropriate.

1 CHAIR WILLARD: Is there a second?

2 COMMISSIONER FRANKLIN: I would add to that
3 that -- and I'm sorry if you said and I didn't hear
4 you -- that we include the director of the BLM on that
5 list as well.

6 COMMISSIONER LUEDER: Yes, I did include
7 Mr. Abbott on that.

8 COMMISSIONER FRANKLIN: Very good. Then I would
9 second that motion.

10 CHAIR WILLARD: Okay. So there's a second. So
11 let's then have discussion.

12 Commission Silverberg.

13 COMMISSIONER SILVERBERG: Well, it seems like we
14 also want to add into that letter that the new IERF
15 Study is included and the BLM Study they did for OSHA
16 just as part of the material so they can understand what
17 we were looking at and why we are even sending them this
18 letter.

19 CHAIR WILLARD: And I'd like to be cognizant
20 about the process that's still ongoing relative to the
21 EIS. And I guess we heard from Mr. Cooper earlier today
22 that that process is still moving forward with the -- I
23 think the end goal was a certification later this year,
24 August or September. So I mean that's the final
25 document that will determine what happens with Clear

1 Creek, if I'm not wrong.

2 So I think that this is our opportunity to try
3 to have input in that process as well. So I think that
4 the letter should be directed specifically towards that
5 process to try and influence its outcome. Because right
6 now that is the process that will more immediately make
7 a determination. Now, whether something happens
8 afterwards and there's litigation, anything could
9 happen. But right now I think that I'd like to see the
10 Commission focused on having an impact on the process
11 relative to the EIS document.

12 Staff, do you have any comments on what would be
13 most appropriate for how the Commission would move
14 forward with correspondence?

15 DEPUTY DIR. GREENE: I think we would, perhaps
16 through consultation with BLM, express the concerns of
17 the Commission and put that in writing as was indicated,
18 recognizing that -- I'm thinking closure season is
19 coming upon us, typically, the dry season closure. So
20 that perhaps if you were to ask for the extension, that
21 that would be possible given the dialogue that you've
22 had here today.

23 CHAIR WILLARD: I'm sorry, extension of what?

24 DEPUTY DIR. GREENE: Well, if you're asking for
25 BLM -- is the request that you're asking for BLM to

1 postpone their decision on the Draft Management Plan
2 pending additional study, consideration of the
3 information that's been presented, and given Commission
4 Lueder's request to the various committees?

5 CHAIR WILLARD: Yeah.

6 DEPUTY DIR. GREENE: I think -- is that perhaps
7 what --

8 CHAIR WILLARD: That's not where I'm coming
9 from. Because, personally, it's been closed too long.
10 I mean it's been closed for three years. I'd just as
11 soon get the EIS certified with an alternative that says
12 let's have some form of open use of Clear Creek. So
13 just extending this, let's have another couple years of
14 study, I don't know if that's what the public wants, and
15 I don't think that's appropriate either.

16 Yeah? Right.

17 (Unintelligible audience participation.)

18 CHAIR WILLARD: So --

19 DEPUTY DIR. GREENE: So, in other words, then I
20 guess what you would say, then, would be in the letter
21 that you would request immediate opening and discussions
22 with BLM?

23 CHAIR WILLARD: Well, I think it's a -- we'd
24 like to propose an alternative. And it's been a while
25 since I've looked at the drafts, so I'm not sure what

1 alternatives were in the EIS. But as I said in my
2 opening comments, I think that there is an opportunity
3 for some sort of a compromise where -- seasonal closure
4 relative to moisture, maybe a rider education, that type
5 of thing, number of days it's being used by riders, I
6 mean that type --

7 DEPUTY DIR. GREENE: Right.

8 CHAIR WILLARD: -- of an alternative-use program
9 could be put in place that does both.

10 DEPUTY DIR. GREENE: I'm sorry. We know that
11 there currently exists a subcommittee for this issue.
12 Commissioner Silverberg and Commissioner Lueder.

13 CHAIR WILLARD: Right.

14 DEPUTY DIR. GREENE: Maybe that would be an
15 avenue by which those discussions then -- in addition to
16 the letters that you're sending would be appropriate
17 given the subcommittee and working with BLM to look at
18 alternatives.

19 CHAIR WILLARD: Okay. So the --

20 DEPUTY DIR. GREENE: Correct me if I'm wrong.
21 I'm just trying to capture this accurately. What your
22 goal is to say is that right now members of the
23 Commission, depending on the vote, would like to see
24 Clear Creek open back up immediately, but not
25 immediately -- so I need a little bit of guidance

1 because you're talking about going into the summer
2 season.

3 CHAIR WILLARD: Yeah. Yeah. I personally am
4 not as interested in let's open it tomorrow type of an
5 approach. I'm more interested in getting the EIS
6 document to reflect an alternative that allows people to
7 use it on some basis going forward long term as opposed
8 to let's just open it now and then study it -- I mean I
9 don't know if that's going to fly, number one, because
10 we are going into the dry season and we've heard that if
11 there are risks, it would be higher in the dry season.
12 So I'm not sure if that's -- unless my colleagues feel
13 differently, I don't think that's the approach.

14 So, again, I'm more focused on the EIS. But,
15 again, if Commissioners feel that there's a better row
16 to hoe on this, I'm open to hear it. But it just seems
17 to me that that's the controlling document that's out
18 there that's going to happen that we have an opportunity
19 to influence.

20 DEPUTY DIR. GREENE: Right. But I think, with
21 all due respect, that there is some concern obviously --
22 it's going to be somewhat difficult for BLM. Let me
23 rephrase this. As we heard today, there are a variety
24 of opinions. If you were to ask me, the area of concern
25 to me is that I think there's enough separation in this

1 country that we need to try and bring people together.
2 So I certainly am not a scientist, so it's difficult. I
3 can consult with certainly our state agencies. But I
4 think it's important to be able to bring everybody
5 together and to have the dialogue and to have more than
6 what we have here today so that -- maybe there aren't
7 avenues exactly as you said here, but maybe there are
8 avenues by which there are appropriate times that it can
9 be open. So I think that's the question that we have on
10 the table. Is that what I'm hearing, or am I incorrect?
11 And I may be incorrect.

12 CHAIR WILLARD: Well, I want to take some
13 action. I mean I think we should do something other
14 than let's just have more meetings and more studies and
15 more dialogue. I mean I think that the Commission can
16 correspond with all of the entities that Commissioner
17 Lueder put forth. I might even add that we could
18 include state officials in that list, the governor -- I
19 mean we're all political appointees, and I'd like to see
20 the officials that appointed us get copies of this as
21 well. I mean it's in the state of California, so I
22 think they would have interest. So the governor, the
23 senate pro tem and Assembly, all the different people
24 that appoint us, they would get copied.

25 But, again, my goal would be to try to influence

1 the outcome of the EIS process. Because, to me, that's
2 the most direct way to get to a long-term solution to
3 the problem.

4 Commissioner Van Velsor.

5 COMMISSIONER VAN VELSOR: Gary, I'd just like to
6 say I don't think that we have seen evidence to suggest
7 that the study with EPA that was done is faulty, that
8 for some reason it is not a good study. What we have
9 seen, there's another study that has demonstrated a
10 little different evidence. And I think it's important
11 to remember as well that the California Department of
12 Toxic Substances Control and the Office of Environmental
13 Health Hazard Assessment have both looked at the EPA
14 Study, and they concur with the results. So I don't
15 think we have seen today any evidence that would suggest
16 that there's something wrong with the methods that the
17 EPA used and the results and the conclusions that they
18 derived from those methods. And I would not support us
19 saying that the faulty study was conducted by EPA.

20 Now, what we can say is that based on the
21 available information, we're going to make a
22 recommendation that may not be consistent with what that
23 science is suggesting. But I would not support saying
24 that it's a faulty process and that the method that they
25 used was faulty, because I don't believe that we have

1 evidence to that effect.

2 CHAIR WILLARD: Commissioner Lueder.

3 COMMISSIONER LUEDER: Yes, I never implied that
4 the study was faulty. I said that per President Obama's
5 memorandum on scientific integrity, the public must be
6 able to trust the science and scientific process. And
7 it's clear to me that the public does not trust the
8 science that was used by EPA, with all due respect. So
9 that's my argument. And I'm trying to keep this simple
10 so that we don't get into semantics and a whole bunch of
11 other things. Simply to state that the public is not
12 feeling that there is a trustworthy product that came
13 out of that study and that we are voicing that concern
14 on behalf of the public and request that Congress and
15 the Senate, the relevant committees take a look at that
16 and basically kick it up to a higher level so that they
17 can decide and they can investigate -- and this is not
18 the first time that federal agencies have been
19 questioned about their studies. There's a recent study
20 in the Golden Gate National Recreation Area where it's
21 clear that National Park Service did not disclose all
22 the data that was available; yet they made decisions.
23 Okay? So I'm trying to get to the point where we can
24 look at it in the same way and say, Was all the data
25 available? Was it all relevant? Was it all applied?

1 Were the risk assumptions relevant? And there is no
2 threshold that we hear today. So I'm trying to get to
3 the point where we can have that discussion at a higher
4 level. And that's basically it.

5 CHAIR WILLARD: Commissioner Slavik.

6 COMMISSIONER SLAVIK: I disagree with my
7 colleague here on my left, Stan, in one respect:
8 There's data -- none of us, I think here, qualify to
9 assess whether the data was collected accurately or
10 assessed accurately or whatever. But the end result of
11 the thing is there isn't enough risk involved in this
12 activity to warrant a closing. I mean that's the bottom
13 line. We're talking --

14 (Applause.)

15 COMMISSIONER SLAVIK: I mean how many people
16 here smoke cigarettes? My friend Dave over here smokes
17 all day long and he's going to probably be dead way
18 before anybody that rides at Clear Creek. And there's
19 warning labels on every pack of cigarettes, and we
20 assume that risk.

21 I've had people in my family die of lung cancer.
22 I'm cognizant of that. But I would not hesitate to take
23 my grandchildren to Clear Creek and take them for a
24 ride.

25 (Applause.)

1 CHAIR WILLARD: Okay. So we have a motion. I'm
2 just not sure it's the right motion for what I'm trying
3 to accomplish relative to the EIS process. And maybe --

4 COMMISSIONER LUEDER: Can I amend the motion?

5 CHAIR WILLARD: Yeah, please. Go right ahead.

6 COMMISSIONER LUEDER: I'll attempt to amend it.

7 So as a result of our discussion here, I would
8 add that the Senate and Congress consider that prior to
9 the Record of Decision being issued on the EIS that it
10 consider the scientific data that was used and direct
11 the Secretary of the Interior as they see fit after
12 their investigation.

13 CHAIR WILLARD: Okay. That's an amendment to
14 the motion. Does that need a second on the amendment?

15 COMMISSIONER FRANKLIN: I'll second.

16 CHAIR WILLARD: We've been discussing it and
17 he's now amended it.

18 Again, I'm just focusing in on the process. I
19 personally think that the letter needs to be a little
20 bit more specific and needs to cite the IERF Study and
21 then, also, perhaps offer up an alternative. And,
22 again, I don't remember what all the alternatives were
23 in the Draft, but an alternative that would try to
24 mitigate what risks there may be with, again, the
25 seasonal closure, the moisture, the time element, all

1 those. So I don't know if a letter can include all of
2 that information. Again, I'm trying to get to the point
3 where we've got the appropriate alternative that's the
4 one that's recommended in the EIS. I mean that's my
5 objective.

6 COMMISSIONER LUEDER: I agree. Yes.

7 CHAIR WILLARD: Okay. So do we need to amend
8 the motion to include that type of language in the
9 letter?

10 COMMISSIONER LUEDER: I will support that, and
11 I'll amend it as stated.

12 CHAIR WILLARD: So should we restate the motion,
13 or do you guys have it figured out?

14 DEPUTY DIR. GREENE: I think. Let's make sure
15 that we're clear because I want to make sure. There
16 were a number of letters that Commissioner Lueder
17 identified -- number of committees.

18 So can you just restate those? I think there
19 were four or five or six even.

20 COMMISSIONER LUEDER: The committees?

21 CHAIR WILLARD: The recipients of the letter?

22 COMMISSIONER LUEDER: Yeah, the recipients of
23 the letter would U.S. House Natural Resources Committee,
24 the Senate Energy and Natural Resources Committee, The
25 Senate Environmental and Public Works Committee, The

1 House Science, Space and Technology committee. So
2 there's four committees.

3 CHAIR WILLARD: And, also, I think Secretary
4 Salazar.

5 COMMISSIONER LUEDER: Yes.

6 CHAIR WILLARD: Yeah.

7 COMMISSIONER LUEDRE: Secretary Salazar and
8 Director Abbo66.

9 CHAIR WILLARD: Yeah.

10 DEPUTY DIR. GREENE: And then I also heard
11 state --

12 CHAIR WILLARD: Yeah, state officials.

13 COMMISSIONER LUEDER: Yeah, governor, senate pro
14 tem, speaker, the folks that appoint us, our bosses.

15 DEPUTY DIR. GREENE: That is that we would
16 reference the report? We would reference --

17 CHAIR WILLARD: You could include a copy.

18 DEPUTY DIR. GREENE: We'd reference the EIS
19 that's currently going on --

20 CHAIR WILLARD: And this meeting where we
21 accepted all the public comments and where we have the
22 panel and the discussion. And, again, I think we have a
23 subcommittee. The subcommittee can work on some of the
24 details, and the letter would come through the Chair.
25 So ultimately the Chair would then work with the Deputy

1 Director to finalize the letter.

2 DEPUTY DIR. GREENE: Okay.

3 CHAIR WILLARD: Okay. So that's the motion. Is
4 the maker of the second okay with those modifications?

5 COMMISSIONER FRANKLING: Yes.

6 CHAIR WILLARD: Okay. Any other discussion
7 before I call for the vote?

8 COMMISSIONER SLAVIK: The only point I would
9 probably make is that we do a number and a count of
10 maybe the bodies here, the people represented, all the
11 hours that we spent deliberating on this, some
12 introduction to this and how serious the public takes
13 this.

14 CHAIR WILLARD: That's a good point. So I think
15 there's a list at the front table that staff might be
16 able to use to get a list of some of the various groups
17 that participated in the meeting today. That could be
18 included in there. That's a good point.

19 Okay. So all those in favor?

20 (Commissioners simultaneously voted.)

21 CHAIR WILLARD: Those opposed?

22 COMMISSIONER VAN VELSOR: No.

23 CHAIR WILLARD: Show one opposed.

24 Okay. Deputy Director.

25 DEPUTY DIR. GREENE: Again, I would like to

1 thank the Commission members and the public, those
2 agencies, certainly BLM, EPA, IERF, were most
3 appreciated.

4 Just one other point of business, if I may. We
5 meet in yet a very short five weeks' time. And so I
6 believe at this point in time we'll be heading to
7 Southern California to the Johnson Valley area. So
8 dealing with some of the Marine Corps' decision for the
9 expansion in Johnson Valley as well as I heard today
10 issues related to the Special Event Permits. So we'll
11 be working closely with you and setting up that meeting.

12 CHAIR WILLARD: Great. And, also, tomorrow's
13 meeting, did you want to give some words to the public
14 on the tour tomorrow?

15 DEPUTY DIR. GREENE: Yeah. Absolutely.

16 So, members of the public, I think you know that
17 we'll be traveling on the county roads only. So we want
18 to make sure that that's very clear. We'll meeting at
19 Oak Flat Campgrounds right there on the county road.
20 And so we'll begin the tour from there talking about a
21 variety of issues and then move along. So obviously,
22 all of know, please make sure you have a full tank
23 of gas, bring whatever necessary supplies that you need.
24 We'll be meeting there at 11:00 tomorrow. So please
25 join us. We welcome anybody and everybody.

1 And if I may, Commissioner Willard, I would just
2 like to take a moment. It's been a very short time
3 since our last meeting of March 14th. So I'd just like
4 to thank the OHV Division staff for all their hard work
5 bringing this meeting together. So thank you, everyone.

6 (Applause.)

7 CHAIR WILLARD: Thank you.

8 Okay. Again, my thanks to EPA and to BLM and to
9 IERF for coming. I think it was very, very worthwhile.
10 We got a lot out of it. And hopefully we could move
11 forward and come to some compromise that works out for
12 the best interest of everybody. Thank you.

13 Meeting adjourned.

14 (Meeting adjourned at 7:42 p.m.)

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